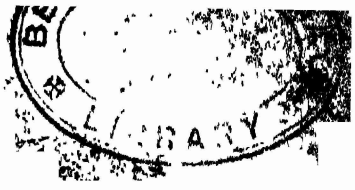

NOTES ON THE BENGAL RENT BILL, 1881.

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PRELIMINARY NOTE ON THE BENGAL RENT BILL.

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1. The Honourable the Financial Member mentioned some time ago that it would be convenient if my work in connection with the Bengal Rent Bill were finished by the beginning of November, as there would be more time to study the papers during that month than after the arrival of the Government at Calcutta. It will not be possible as yet to complete the case for submission, but I have so far advanced with the subject that I venture to hope some preliminary remarks indicating the chief questions raised and the sources of information regarding them may facilitate its consideration. Under the circumstances, the best plan seems to be to put up an office note on the letter* of the Bengal Government, No. 3407, dated the 27th July 1881, which immediately awaits disposal. Reasons for writing this Note. Bengal letter, July 1881.

2. The first ten paragraphs of this letter describe the recent proceedings in the matter, characterise some of the leading papers to be dealt with, and, incidentally, sketch the general policy of the Lieutenant-Governor, to which I shall more particularly refer below. In April 1879, on the report of the Select Committee regarding the very limited Bill then pending in the Bengal Legislative Council,—a Bill "to provide for the more speedy realisation of arrears of rent and to amend the law relating to rent,"—it was accepted that the Rent Law of Bengal must be comprehensively examined and revised, and the Government of India agreed to the appointment of a Commission for this purpose. It is important to observe the method followed in entering upon this extensive undertaking. During a series of years much correspondence had accumulated on the working of Act X of 1859, on agrarian disturbances in Pubna and elsewhere, on the levy of illegal cesses, on the *khudkasht* or household system, on the relations of the indigo-planters and ryots in Behar, and on the difficulties which landlords experienced in realising their rents, and which the Government, equally with the zemindars, felt in enforcing legitimate enhancements. There was a mass of evidence before the Government of Bengal and the Government of India bearing more or less directly upon the Rent Question. In these circumstances it was not thought necessary to institute any general inquiries as to the present state of the relations Appointment of the Rent Commission, April 1879.

* Four Papers IV, series I. + Letter from the Bengal Government, No. 852—357 L.R., dated the 2nd April 1879. Telegram from the Government of India, Home, Revenue and Agricultural Department, dated the 15th April 1879.

Its method of procedure.

between landlords and tenants, or to investigate the customs which, either as a comparatively recent growth under British administration or as the heirlooms of untremembered times, might anywhere govern these relations. The Rent Commission asserts (although the assertion is not unchallenged) that the majority of tenancies in Bengal and Behar depend upon custom rather than contract.* Customs touching the tenure of land vary with the locality, with the class of persons interested, with the lapse of time; they assume new shapes under the pressure of new needs and die out or are revived as circumstances alter; by reason of their variety, of their gradual growth or change, of their very popularity, which induces tacit assent, they are apt to elude the grasp of the inquirer, and their existence is often unsuspected or overlooked until some dispute, ending in a judicial ruling, or some uncongenial law, confirms or crushes them. But here there has been no systematic examination of any provincial customary law; it is the statute-law and the case-law which have been considered. Mr. Field was placed on special duty to compile a digest of the law as it now stands: his work was circulated for criticism, and, with the comments upon it thus obtained, formed the foundation of the Commission's labours. Doubtless the case-law must to a great extent reflect, though it would not exhaustively delineate, existing practices; in Bengal,—partly, perhaps, from the absence or decay of the village communities, and partly from the history of the Province under British rule and the type of its present administration,—indigenous usage may have been much more largely superseded by legislation and judicial decisions than in territories more recently acquired and governed in a more primitive way; and, lastly, the knowledge of the country possessed by the members of the Commission, taken with their opportunities of communication with zamindars and others interested in the Bill, would be some security against insufficient advertence to local differences of fact or habitude. Nevertheless, it should be remembered that the Bill will affect the agricultural classes in a population of nearly fifty-six millions spread over an area of about one hundred thousand square miles.†

3. Although there was no comprehensive and systematic effort to bring together the exact details of the present position throughout Bengal, it was perceived several years ago that in Behar legislation, and possibly special legislation, would be inevitable; and the Behar officials and others had therefore been particularly consulted before it was resolved to appoint a Rent Commission for Behar and Bengal at large. In September 1878, these consultations resulted in the nomination by the Bengal Government of a Committee of officials and private persons to consider the question of the Rent Law for Behar.

The Behar Rent Committee, 1878-79.

Messrs. Worsley and Finucane prepared draft Bills. Meetings were held in November 1878, and the Behar Rent Committee submitted its report on the 8th March 1879. The next month, as already mentioned, the Bengal Rent Commission was appointed, and its preliminary discussions took place in April and May of that year. It then adjourned to reassemble in the following December, when Mr. Field's Digest had been completed and the opinions thereon were available. The Behar Rent Committee did not adopt either Mr. Worsley's Bill or Mr. Finucane's. It came to the conclusion that the whole Rent Law should be recast, and this task it regarded as beyond its powers. The proceedings of the Behar Rent Committee were therefore laid before the Bengal Rent Commission, and are dealt with in the Commission's Report.

Report of the Bengal Rent Commission, June 1880.

4. That Report bears date the 19th June 1880, and is accompanied by a Draft Bill for the revision, practically throughout its whole extent, of the Bengal Rent Law. Mr. H. L. Dampier, the President, and Babus Mohini Mohun Roy and Peary Mohun Mookerjee sign subject to certain remarks which they annex. The Report is at once a description of the law which it is proposed to enact and an exposition of the motives for the several proposals. It is an elaborate and exhaustive statement of the objects and reasons of the measure. It would ill become a non-expert to express even admiration of the work done by the Commission; but no one, however imperfectly acquainted with the Rent Law of Bengal, can fail to be struck by the ability and learning displayed in the Report and the wise moderation of its tone. The Government of India will doubtless concur with the Lieutenant-Governor† in

* Rent Report, Lyttelton, 7. † The Bill does not extend to the Orissa Division or to the Chota Nagpore Division or other Scheduled Districts, viz., Jalpaiguri, Darjiling, the Hill Tracts of Chittagong, and the Santhal Pergunas.—Rent Papers I, page 113; IV, page 21. ‡ Paragraph 6 of the letter of 27th July 1880.

commending the dispassionate and complete proceedings of the Commission and in acknowledging the high value of its work as preparatory to any future legislation.

5. The Draft Bill framed by the Rent Commission, and its Report with Contents of Vols. I and II of the Report of 1880. brief memoranda by some of the members, form the contents of Volume I of the Rent Papers. The second Volume comprises the record of the meetings of the Commission, the proceedings of the Behar Rent Committee, minutes by Sir Richard Garth on Mr. Field's Digest, and notes by the members of the Commission on merger, on the use of land for building purposes, on the rights and status of the cultivating classes, and enhancement, ejectment and subletting. I would invite attention to the historical (I had almost said antiquarian) and in some cases rather abstract and general tone of these discussions. The debate takes its departure from a note on the enhancement of rent (appended by Mr. Field to his Digest), which is, to a great extent, an endeavour to ascertain from the language of the Regulations the intention of the Legislature in 1793. The law and proceedings connected with the permanent settlement, the views of Sir John Shore, of Lord Cornwallis, of the Court of Directors at the end of the last century, of Lord William Bentinck and Mr. Holt Mackenzie, are copiously quoted and commented upon. "I have read," says Mr. A. Mackenzie,* "through masses of documents on the question of the effects and intent of the permanent settlement and the rights of all classes interested in agriculture, and I find everywhere a general concurrence of opinion that by the customary law of India the actual cultivators of the soil, in the broadest sense of that term, were held entitled to protection and to be maintained in the peaceable occupation of their fields." If it be determined to go behind Act X of 1859, as embodying a decision upon tenant-right in Bengal which proceeds upon erroneous principles, then one main question is what are the customary rights and status left to the cultivating classes by the legislation of 1793? And the answer is sought not amongst the people, in the fields and villages, beside the grain heap or at the rent office of the zamindar, but in Regulations, in Acts, in judicial decisions, in recorded debates and opinions often belonging to a time long past. It is not denied that legislation must be adjusted to the actual facts of the present day; but those facts are seldom touched upon except in very general language, and there are few references to specific practices in particular parts of Bengal. There has been no general and local investigation† of the custom of the country, but there is practically an inquiry into it; and the evidence brought forward is, for the most part, fifty, seventy, or nearly a hundred years old. Historical character of the discussions.

6. If only to clear the way for some revised enactment, it was, no doubt, highly necessary to explore the statute and case law, and to gauge the effect of the permanent settlement on the authority of the Government and the constitutional claims of the people; on the last point, Mr. O'Kinealy's able researches and expositions have already gained a very high place in official literature.‡ Numbers of local reports were, it should be mentioned, before the Commission, but these have not been forwarded to the Government of India. Evidently, it was desirable that the final results of the labours of the Commission should be tested by criticisms or suggestions drawn from the current experience of officers and others brought into close contact with the daily life of the agricultural community. It was an usual measure, which would naturally be adopted on the completion of such a draft as the Commission's Bill, to circulate it widely for opinion. This was duly done in July 1880, and the Lieutenant-Governor in a letter of the 15th of that month§ called attention to some of the questions which he thought should be generally and carefully considered. In particular, he wished to ascertain the effect of certain proposals of the Commission on local custom, and of certain other proposals on specified tenures in districts which he named; he desired to learn the *practical* objections which might exist to the course he contemplated in regard to occupancy right; and he expressed doubts whether the sub-occupancy tenure recognised by the Bill actually existed in practice. Further, the Lieutenant-Governor himself discussed the Rent Question with Divisional and District Officers and with private persons interested in land.‖ As the replies to his requisition began to come in, it Measures taken to render current experience available.

* Rent Papers II, page 105. † Such, I mean, as is undertaken in my own Province at time of settlement, resulting in a full record of usages. ‡ Note on Enhancement, Rent Papers II, pages 413-34. § Rent Papers I, page 1. ‖ Bengal letter No. 1997, dated 5th October 1880 (485.)

was found necessary to place Mr. Reynolds* on special duty† to examine them and to prepare a fresh draft. The whole tendency of Mr. Reynolds' work is towards the practical rather than the historical side of the question. Under the orders of the Lieutenant-Governor he visited Patna, Dacca, Burdwan, and other important local centres to confer with officials and non-officials. Notably, his fresh and vigorous proposals for grappling with the serious problem of the condition of the Behar tenantry were framed after personal consultation on the spot with local experts. Mr. Dampier, the President of the Rent Commission, himself expresses the opinion‡ that the mode in which it dealt with Behar was the least satisfactory part of its work; and, perhaps, if it be not venturesome to suggest the existence of an imperfection in its Report, it might be said that it contains no internal evidence of any such vivid impression of the character and degree of pressure to which Behar ryots are exposed as naturally forces itself upon the mind on the perusal of Mr. Reynolds' Notes on the Behar question, and of the numerous and able reports of the Behar officers.

"The work of the Commissions in connection with Behar."

7. In February last, Mr. Reynolds, acting in communication with the Local Government, drafted the first fourteen chapters of a revised Bill, which were circulated, with an explanatory memorandum, for further opinions. His Bill was completed in May last, and the Lieutenant-Governor then caused another draft to be prepared under his own orders. The draft, therefore, which the Government of India has to consider is the third revise. Of the volumes now forwarded by the Bengal Government, the second contains (1) the opinions on the draft of the Rent Commission (pages 415 to 864); and (2) the views of selected officers and non-official bodies on the revised draft prepared by Mr. Reynolds (pages 865 to end). It also includes a note by Mr. Reynolds on the letter of the British Indian Association (pages 1003 to 1010), which deserves perusal. The second collection of opinions has not been summarised, but I shall endeavour, when commencing in detail on the Lieutenant-Governor's Bill, to bring forward the principal points of interest in them.

Draft Bill of Mr. Reynolds, February 1881.

Report of the Bengal Government, July 1881. Contents of Vol. II.

8. The first volume now forwarded (in order of date, it would properly come last) comprises (1) the Lieutenant-Governor's Bill, with the explanatory letter now under review (pages 1 to 126); (2) a memorandum on the history of the rent question in Bengal since the passing of Act X of 1859 by Mr. Mackenzie (pages 129 to 193); (3) extracts from Phillips' Lectures on the Land Tenures of Lower Bengal and from the Report of the Famine Commission (pages 195 to 201); (4) correspondence on the difficulties attendant on the enhancement of rents in land settlements in Bengal (pages 203 to 241); (5) Mr. Reynolds' Memorandum of 18th May 1881, and Draft Bill (pages 243 to 374); and (6) his Notes on enhancement, occupancy rights, and produce rents in Behar, and on the occupancy right in general. The Memorandum of the 18th May includes a summary of the opinions on the draft of the Rent Commission mentioned in the preceding paragraph. The correspondence on the impediments to settlements (No. 4 above) has been separately received and reported to the Secretary of State, but for information only, and with the remark that the questions involved will be practically determined by the decision regarding the Rent Law.§ The Rent Commission does not deal with this subject, and it will more appropriately be brought up for any further orders which may be necessary when the general principles on which the Rent case should be treated have been settled by the Government.

Notes Report. Contents of Vol. I.

9. It follows from the above abstract that a good general acquaintance with the points on which the Government of India may desire to express an opinion can be obtained by reading Mr. Reynolds' Memorandum of 18th May 1881 with the Draft Bill of the Commission, and then by referring to the notes in the Lieutenant-Governor's present letter (Rent Papers IV, pages 16-27), which explain the alterations made in the scheme of the Commission by the Local Government. In some instances it would be necessary to seek further exposition in the Report of the Commission (Rent Papers I, pages 5-89). Mr. Mackenzie's historical paper (Vol. IV, pages 129 to 193) gives a very valuable account of the previous correspondence and legislation during the last twenty-

Sources of information.

* Mr. Reynolds did district work for about 17 years. It was not till 1874 that he held a Secretariat appointment, nor does it appear that he has been employed in the Judicial Branch of the Service. † Order sanctioning this arrangement were passed on 19th October 1880. ‡ Rent Papers III, page 220. § Despatch (Revenue and Agricultural Department) No. 16, dated 14th November 1881.

8 years. If any further introductory information is wanted, more particularly the tenures and revenue system and history of Bengal, such may be found, within a fairly moderate compass, in the Bengal Administration Report for 1872-73, pages 39 to 80, in the Bengal section of Mr. Baden-Powell's "Manual of the Land Revenue Systems and Land Tenures of India," and in McNeile's memorandum of 1873 on the Revenue Administration of the Lower Provinces. These two works last mentioned have been very useful to me.

Noticeable opinions.

10. In taking up the draft of the Commission it is not very difficult to seize the general drift of the opinions, as the greater part of them follow the order of the Bill, and thus the required comment on any particular section may be traced with ease. Amongst the most noticeable papers are those by the Behar Landholders Association (III, pages 415-48); the East Bengal Landholders Association (III, pages 559-87); and the British Indian Association (I, pages 978-1001), as well as those by Mr. J. Monro, Officiating Commissioner of the Presidency Division (III, pages 687-92), and by Lord Ulick Browne, Commissioner of the Rajshahye and Cooch Behar Division (III, pages 693-7), all on the side of the zamindars; the Indian Association (I, pages 1047-61) advocates the cause of the ryots. I shall collect below the references relating specially to Behar; of the rest of the opinions, I would note thoughtful letter by Babu Kishori Lal Sirkar, a pleader of the High Court (II, pages 483-7), some suggestions on the law relating to *patni* tenures by the Maharaja of Burdwan (III, pages 529-39), some notes by Deputy Collector Srihati Churn Roy, who proposes (III, page 621) a settlement of rent rates by maouzadar and classification of soils, and the letters of Mr. Stevens, Officiating Collector of Burdwan and afterwards Collector of Dacca (III, pages 913-8 and 875-9), of Mr. J. Anderson, Collector of Bankura (III, pages 919-62 and 919-31), and of Mr. A. Smith, Commissioner of Orissa (III, pages 963-77)—all in the way of detailed criticism. A note by Mr. Westmacott, Collector of Nowkhali (III, pages 965-17), which also closely comments upon the proposed provisions, is, I venture to think, one of the best contributions to the discussion. The Lieutenant-Governor sketches in his letter of the 27th July the general character of the communications from the British Indian Association, the Indian Association, and Mr. John Stalkartt, an English holder of some *ryoti* land. It is not a part of the scheme of this note to enter upon the views of individual officers or particular associations, as I hope by other means to bring out in sufficient relief the main points upon which the Government will desire to deliberate.

Question of tenant-right in India generally.

11. Before passing on to the second part of the Lieutenant-Governor's letter, it may be useful to remark that the question of tenant-right has already been, to some extent, under the consideration of the Government in recent years, and must further have engaged its attention before long, even if legislation had not been contemplated in the Lower Provinces. A general sketch of the position of tenants in Northern India, Madras, and Bombay is presented in the Report of the Famine Commission,† and the opening paragraphs (8 to 12) are cited by the Lieutenant-Governor with approval as a correct description of the origin and character of the status of Bengal tenants.‡ Appropriate extracts from this part of the Famine Commission's Report have been communicated to the Governments of Bengal, the North-Western Provinces and Oudh, the Punjab, Madras, and Bombay, and to the Chief Commissioner of the Central Provinces, for consideration or opinion on the points raised.§ As yet, except that the present papers dispose of the matter so far as the Government of Bengal is concerned, replies have not been received. It is well known that the Famine Commission has urged upon the Government the desirability of strengthening the cultivators' rights, both on the historical ground that it would be just to restore them to a position which they have gradually lost, and on the economical ground that "security of tenure must have its usual beneficial effect."‖ The principles accepted in the present instance will, it can

* I may here conveniently repeat the explanation given in my memorandum on the Rent Questions in Behar on the system of citation which it has seemed most convenient to adopt. In my notes, *Rent Papers I*—Vol. I of the report of the Bengal Rent Commission; *Rent Papers II*—Vol. II of the same Report; *Rent Papers III*—Vol. II now submitted by the Bengal Government containing the opinions on the Bills framed by the Commission and Mr. Reynolds; *Rent Papers IV*—Vol. I now submitted by the Bengal Government containing, inter alia, the Lieutenant-Governor's letter. The draft of the Rent Commission Bill (Bill I, that of Mr. Reynolds, Bill II, and that of the Behar Bill, Bill III. Whenever I mention the *Report* without further specification, I mean the Report of the Rent Commission, and similarly by the expression the *Record*, I refer to Mr. Field's book.

† Volume II, pages 119-124. ‡ Rent Papers IV, pages 196-205. § Home, Revenue and Agricultural Department proceedings, Revenue, February 1881, Nos. 89-124. ‖ Volume II, page 118, paragraph 24.

The present cause will form a precedent.

hardly be doubted, constitute precedents of far-reaching consequence. In the North-Western Provinces, indeed, the Rent Law of 1873 has recently been amended by Act XII of 1881. In the Punjab the question of revising the Tenancy Act, No. XXVIII of 1868, has more than once been considered and always with a negative result. I am informed that there is reason to believe that the local circumstances of Sirsa and possibly of neighbouring districts were not sufficiently recognised on its enactment, and a report on this subject is expected by the Government of India. The Lieutenant-Governor is not, I believe, in favour, at this date, of modifying the law in behalf of the Sirsa tenants. But there are other Provinces where legislation either may be, or actually is, impending. The Oudh Act, No. XIX of 1868, was passed a few months before that applicable to the Punjab. There is no part of Northern India where the position of tenants is so weak as it is in Oudh. They have an able and earnest advocate in Mr. H. C. Irwin, whose book on Oudh* has attracted a good deal of notice; and it will be a matter of much interest to observe in what way the Local Government may be disposed to receive the suggestions of the Famine Commission. The Punjab and Oudh are alike in one respect; in neither can occupancy rights be acquired by any statutory prescription. The 12 years' rule brought into force in the greater part of the Bengal Presidency by Act X of 1859 has not been adopted in either of these two Provinces. But in the Punjab occupancy rights can be acquired under different local customs, chiefly depending upon improvement or breaking up the waste, and the 8th section of the Act enables the Courts to give effect to these, because it permits occupancy rights to be claimed upon any ground other than those specified in the enactment. The Central Provinces Rent Bill has not yet been passed; and it is remarkable that the Statement of Objects and Reasons opens with a denunciation of Act X of 1859, perhaps more emphatic than any which will be found in the Bengal Rent papers. The Act, it is said, has been found in many respects unsuitable to the Central Provinces: it has absolutely curtailed the ancient privileges of the tenants, and this contrary to its primary intent; it has further been shown by experience to be inappropriate and inconvenient both in its procedure and in some of its substantive provisions. The Bombay Government has lately regulated the relations of the Konkan landlords, called *khots*, and their tenants by Act I (Bo. C.) of 1880; but the question of subordinate tenancies, under the Bombay occupant (or peasant landholder with a tenure direct from the State), has been distinctly raised by the Famine Commission,† and will shortly come under review. In Madras, the Famine Commission is of opinion‡ that legislation is necessary, as the inadequate wording of the Rent Act, VIII of 1865, and a ruling of the High Court in 1871, which practically decided that zamindari tenants are *prima facie* tenants-at-will, have changed the position of those ryots for the worse and exposed them to many forms of oppression. Further, the recent settlement operations in some districts of the Pegu Division of British Burma have disclosed the existence of subordinate tenancies in that *ryotwari* part of the Empire; and in the case of the Jaintia parganas of Sylhet, a part of Assam where the landholder has a status not unlike that of the Bombay occupant, it has been thought right to invite the attention of the Local Administration to the views of the Famine Commission relative to sub-letting on the part of those who are recorded as Government ryots.

Of the Punjab.

Of Oudh.

Of the Central Provinces.

Of Bombay.

Of Madras.

Sub-tenants in Burma.

In Assam.

The Question since 1859.

Rent

12. In the second portion of his letter the Lieutenant-Governor, after a brief reference to the necessity for legislation, enters upon an exposition of his principles and main proposals. It is, of course, from the history of the relations of landlord and tenant in Bengal since the last legislative attempt to determine them made two and twenty years ago, as well as from the present circumstances of the country, that the need for fresh intervention must be established. Without dwelling here upon this part of the subject, I may note that the great landmarks are two celebrated judicial cases, two procedure Acts, the riots of 1873, the abortive attempts of the last few years to facilitate recoveries of rental, and, I may add, the conspicuous assertion of the Famine Commission§ that legislation is urgently required in the interests of the

* The Garden of India (see page 230). † Report of the Famine Commission, Vol II, page 125, paragraph 40.
‡ Report of the Famine Commission, Vol II, page 128, paragraphs 45-46. § Report of the Famine Commission, Vol. II, pages 127, 131, paragraphs 21, 36-37.

Behar tenantry. The omission which has struck me in Mr. Mackenzie's Memorandum is that which I have already noticed in the Report of the Rent Commission. I do not think that enough stress is laid on the gravity of the situation in Behar. The study of these papers goes far to produce the conviction that the duty of instituting adequate measures for the prevention of oppression in Behar is an imperative one which ought not to be postponed.* For the rest, I will only say that had it not happened that the proposals of the Rent Commission were calculated, in spite of the studious calmness with which they were expressed, to arouse opposition and generate alarm, there might have been no question whether resort should now be had to the Legislature. It was practically accepted on all sides that the law should be revised, till the landlords were frightened by the proposed amendments.

The proposals of the Rent Commission.

13. The principles and proposals of Sir Ashley Eden will perhaps be the more readily appreciated if allusion be first made to the recommendations on which the measure he offers for acceptance is, to a great extent, founded, but which it also, in some degree, supersedes. Premising that a *zemindar* means the owner of an estate held direct from the Government, that a *tenure-holder* or *under-tenure-holder* is a middleman, a rent-payer intervening between ryot and zamindar, and that a *ryot* is, in common acceptance, a cultivator, but more accurately, one who holds land or occupies and cultivates land below the owner or middleman, it may first be remarked that the Bill of the Rent Commission created a new class of tenure-holders and a new class of ryots, both, it appears, quite unknown to either law or custom. The new tenure-holders were hundred-high men,† persons to whom more than one hundred standard bighas of land had been let by a single demise otherwise than for a term or year by year, by Government or by a proprietor. Numbers of ryots holding many acres, in the Eastern Districts of Bengal, would have found themselves unexpectedly promoted, perhaps to their own detriment. The new ryots were three-year men,‡—the continuous occupation and cultivation of land for three years was not to confer the full privileges of an occupancy ryot, but it was to entail consequences which would render it hard for the landlord to remove the cultivator from his land, so that the latter might sit on till a further period of nine years matured his prescription. The twelve years' rule for the acquisition of the right of occupancy was retained,§ but the legal incidents of the right, previously in a more or less amorphous condition, were declared in express language. Every occupancy holding was to be heritable, devisable, and transferable by private sale or gift, but not by sale in execution of a decree, other than a decree for arrears of rent, nor by mortgage.‖ The ryot was not to be subject to ejectment, even for non-payment of rent, the substitute being the execution sale consequent on a decree for arrears; he could be ejected only for the breach of a stipulation in respect of which he and his landlord had contracted in writing that its breach should have such effect. Registered contracts in writing debarring the acquisition of the occupancy right, and made on the entry of the tenant into possession, were to be upheld; but no other contracts were to interfere with the operation of the twelve years' rule. The grounds of enhancement were not much changed; but rents, whether in cash or kind, were to be strictly limited by rules imposing *maxima* which might not be exceeded and otherwise (as by the principle, in certain cases, that the enhanced rent should not be more than double the rent previously paid¶), curtailing directly the discretion of authority and, in effect, the range of private agreement. Rents were to be raised, when the enhancement was claimed because the rates were below the prevailing rates, or because the ryot had more land or more productive land in his possession, by application, at the option of the applicant, either to a Civil Court or to the Collector. When the enhancement was claimed in consequence of a rise in price, the Collector alone

* I may here collect, as promised above, the principal references in these papers which bear on the Behar question. Bent Papers I, pages 60-70, 151-4; Rent Papers II, pages 205-206 (the Report of the Behar Committee pages 232-38, is the most essential paper, but it will be better understood from the previous correspondence which is not contained in the Rent Volumes). I have endeavoured to obviate this difficulty by writing a separate memorandum on Behar. At present we have no copies of some very essential papers except in the Bengal Proceedings Volumes. The necessary translation has been made. Rent Papers III, pages 415-17, 417-8, 713-34, 839-74, 877-8, 881, 885-90, 897-901, 905-23. The papers by Mr. Reade (pages 713-727, 871-3), Mr. Mackenzie (pages 734-45, 881), Mr. Finucane (pages 895-91), and Mr. Edgar (pages 747-50), are perhaps, specially valuable. Rent Papers IV, pages 10-12, 26, 67-70, 209-2, 322-6, 495-501. In beginning the subject it might be convenient to read first Mr. Reade's Notes, IV, pages 871-3. † Bill I, section 12. ‡ Bill I, chapter IV. § Bill I, section 18. ‖ Bill I, section 30. ¶ Bill I, section 33 (4).

elaborate and complicated systems of law. The mass of people are yet steeped in ignorance as it were. Laws which they do not understand and which are beyond their powers to grasp should not be introduced merely with a view to obtain a theoretical fairness or to remove any slight inequalities existing under the laws in force. * * * * People of this country can put up with wrongs which custom has rendered tolerable, but they will not easily submit to anything they consider wrong under a new system. Legislature will do well to confine their attempt to removing what experience has proved to be bad, without aiming at introducing new systems, organising new relations, and creating new sources of dispute." Mr. Oldham, the Deputy Commissioner of the Southal Parganas,* has more distinctly formulated the sense of possible disturbance in hereditary and ancient connection which may conceivably be felt in considering the effects of this Bill on some parts of Bengal; and it is noticeable that experience of his charge should be a good repertory of practical criticism, both from the variety of the tenures in the district and from the circumstance that its special rent law embodies a procedure not unlike that proposed by the Commission. "The first obvious relation," he says, "existing in the district, as elsewhere in the country, was that between Raja and Praja—terms used alike in the Hindi and Bengali portion of the district—and which are scarcely interpreted by landlord and tenant. The bond was strong for good or evil, and the recent settlement has, temporarily at least, destroyed that bond, for evil certainly, and as certainly for good. That the draft, if made law, would have a similar effect, though not in the same degree, there can be no doubt." We are not now accustomed to perceive any direct connection between political status and the contractual relationship arising out of a demise of lands: but there may be a point in the history of property when the ideas associated with both sets of obligations are completely blended; and it is not improbable that, in many parts of India, British Government and British legislation may have enormously accelerated the natural process of disentanglement, whereby the consequences of voluntary agreement are gradually severed from the duties arising out of hereditary claims. In Bengal Proper sub-infeudation and the transfer of properties by auction and other sales may have very generally broken old ties, and the actual rent-receiver may often be a mere intruder in the rural hierarchy. But the amount of sub-infeudation varies; and Mr. Westmacott† notes that the Maharani of Dinajpur has no difficulty in realising her rents from her thriving and lightly assessed tenantry. There are other estates in Bengal where the zamindar still has hereditary rank or position, and it would be strange indeed if in all of these the chronic relations between zamindar and ryot was one of mere tension or hostility.

Objections to the wide scope of the Bill.

17. Lastly, it is clear that a number of officers were impressed with the conviction that the Commission,—possibly as a result of the very thoroughness with which it probed and shaped the mass of documentary material at its command,—had been led to attempt a too complete reconstruction of the law. It will be noticed that, with only one exception, misgivings of this class do not proceed from Behar; and I refer to them merely to point out the existence of feelings of doubt or surprise not as suggesting what, if any, particular weight should be attached to expressions of individual opinion. "I am not in favour," says Mr. Ravenshaw, Commissioner of the Burdwan Division,‡ "of revolutionary measures, and I think that legislation should rather take the form of consolidating the existing law and rulings than reconstitution of the relations between rent-payer and rent-receiver which must produce an increase rather than mitigation of existing evils." And later on, Mr. Beames, Officiating Commissioner of the same Division, after receiving Mr. Reynolds' revised draft, observes§:—"I am not aware that any section of the community has suggested or manifested any desire for new legislation on the rent question. If there is really a want for it in Behar, it would perhaps be sufficient if a law were passed giving the inhabitants of that province the relief they desire without disturbing another province where no change is called for." Mr. Anderson, Collector of Bankura,‖ after some remarks suggesting that there is no urgent need for legislation in behalf of the zamindars, concludes that there remains "a revision of the whole law for the benefit, pure and simple, of the ryots of Bengal, who have not asked for it, and who require it admittedly

* Rent Papers III, page 630. † Rent Papers III, page 612. ‡ Rent Papers III, page 627. § Rent Papers III, page 801. ‖ Rent Papers III, page 630.

h less than the ryots of Behar. Provided, therefore, they can be benefited
ment confiscation of zamindars' and tenure-holders' fair rights, and provided
can be done without a flood of litigation and setting class against class
without expense to Government, I think a *short*, but comprehensive,
ure may be educed from the mass of material offered by the present
" Mr. A. Smith, Commissioner of Orissa," deprecates "extensive adjust-
t and alteration of existing relations." A similar caution is enunciated
Mr. Monro, Officiating Commissioner of the Presidency Division, in
se opinion the Bill of the Commission aimed "at giving almost all classes
ots fixity of tenure at a Government valuation of the land." Lord Ulick
ne, Commissioner of the Rajshahye and Cooch Behar Division,† thinks
the most important provisions of the Bill went too far and were unneces-
and objectionable. He is sure "that Government officers charged with
nistrative duties in the interior would, if asked, be almost, if not quite,
imous in saying not only that there is no general feeling of discontent
ng the ryots in whose favour it is now proposed to sacrifice the zamindars,
hat there is not even a partial feeling of that nature, and that the ryots of
al Proper, at all events, are, as a body, in a prosperous and contented
ition." Mr. Beveridge,‡ the Officiating District Judge of Patna, and
only Behar official who questions the need for comprehensive reform,
ders the Commissioners were too ambitious, and attributes the origin of the
osals for amending the law to the imposition of fresh duties on the landlords
nnection with the Roads and Public Works Cesses,—a view to which the
sh Indian Association§ subscribes. In the opinion of Mr. Cockran,
ating District Judge of Cuttack,** (who notes that the people of the east
ngal are generally not well affected to their landlords), the ryot needs
ordinary protection against the oppression of the landlord much less now
he did in 1859, and the Bill contemplates, at a time when there is much
ed for them, very much greater and more sweeping changes than were
by the Act of that year. I will close this long series of quotations by
ting the perusal of some observations by Mr. Westmacott, Collector
Sonkhall,†† which seem to me to possess considerable value. Admitting
this is a large admission) that "protection against arbitrary eviction
d be given to every settled ryot who pays the established rent," he
ves no necessity for the proposed legislation on this point in the districts
which he is acquainted.‡‡ He thinks that a part, at least, of the Bill
ds on the mistaken assumption that landlords wish to get rid of their
ts, whereas, according to his experience, the very reverse is the fact.

Classification of objections.

8. Summarising the above objections, the case against the Bill of the Commission may be said to be (1) that it would diminish the property and power of the landlords without assigning them compensatory advantages of any kind, (2) that it would break through and anachronise customary and traditional relations, and (3) that, in pursuit of historical and economical precision, it would travel, at least in Bengal Proper, beyond the necessities of the time.

Objections of the third class considered.

9. The importance of the objections in the last category cannot be over-estimated, but might easily be exaggerated. To press the distinction between the historical and the practical aspect of a large question affecting complex rights and vast multitudes of people§§ would be to insist upon a false contrast, because changing conditions cannot be safely dissociated from the circumstances out of which they arise. Moreover, in the present case, the pledges of the permanent settlement are the obvious ground of appeal, and the Government is forced by the decisions of its predecessors to determine what issues have not yet been foreclosed. A conclusion is not condemned because it is theoretical; the real question is always whether the theory is right or wrong. Political economy, not the abstract disquisitions of text writers illustrated by the experience of another quarter of the globe, but applied political economy generalising

† Rent Papers III, page 616. ‡ Rent Papers III, pages 695, 701. § Rent Papers III, pages 692-6. ¶ Rent Papers III, page 711. ** Rent Papers III, page 693. †† Rent Papers III, pages 703-4. ‡‡ According to the service list—Backergunge, Cachar, Howrah, Hooghly, Midnapur, Bankura, Singbhum, Manbhum, and Hazaribagh. §§ The Famine Commission (Vol. II, page 116) estimates the total number of tenants in Bengal at 5½ millions. Bill frees this total a considerable deduction must be made, as the Bill does not apply to Wards' Estates, Khoodkasht, or to more other parts of the country. Babu Peary Mohun Mookerjee estimates that there are 262,786 estates and 1,050,242 tenants in Bengal (Rent Papers II, page 416).

cautiously upon the best data which responsible investigation can provide, is, in Indian land revenue administration, only another name for statesmanship. Whether, notwithstanding the formidable appearance of these volumes, the evidence now before the Government does sufficient justice to the complexity of the interests which will be touched by the proposed legislation and to the variety of circumstances, and possibly of custom, which must exist in so vast a population, is a serious question demanding much reflection. The Government of Bengal, at least, seems fairly satisfied* on this material point; although the zamindars, to judge from the testimony of their representative institution, believe that the inquiries hitherto made are not adequate.†

Objections of the second class considered.

20. The difficulties of the second class, involved in the assertion that comprehensive legislation may transform traditional social institutions, are not peculiar to the treatment of the rent question in Bengal. They are the necessary concomitant of foreign and civilised dominion. However much individuals may regret the better part in the old order of things that is passing away, there can be no reasonable doubt that native society does and must undergo numerous modifications. It is only necessary to say that where the probability of a large impetus to transition is distinctly perceived, the risk of too rapid change, especially over very extended areas, will be remembered.

Objections of the first class.

21. It is to overcome the difficulties of the first class, finding expression in the disappointment and opposition of the landholders, that the Lieutenant-Governor of Bengal has mainly addressed his efforts; and without the slightest disparagement of the work of the Commission, the Government will perhaps recognise in Sir Ashley Eden's Bill, elaborated, at an advantage, in the light of the experience and criticism of many officers, a more practicable basis for the settlement of some portions of the rent problem than is afforded by the previous draft. From the mass of these discussions four large questions stand out in prominence; other matters are either connected with them by way of reason of consequence, or, in comparison, though often intrinsically very important, may be regarded as details. These questions are (1) the *occupancy right*, the class which shall enjoy it, and its incidents, including transferability; (2) the grounds and limits of *the enhancement of rent*; (3) the *procedure* by which enhancements of rent may be effected; and (4) the measures proposed for facilitating *collections of rental*. On these out of these four questions the recommendations of the Lieutenant-Governor differ very materially from those of the Commission; and, in addition, His Honour has entirely recast the special provisions for Behar.

Four main questions raised.

Proposals of the Lieutenant-Governor.

22. Sir Ashley Eden has eliminated the hundred-bigah tenure-holders and the three-year tenants. He has thrown upon the Courts the duty of determining in any given case whether any particular person is a tenure-holder or a ryot;‡ but he has so far retained the arbitrary test of area as to save the customary rights of the under-ryots of an occupancy ryot where the holding of the latter is more than one hundred bigahs in extent.§ The three-year tenants altogether disappear; there is no need, under the Lieutenant-Governor's Bill, for any such ambiguous class, because of enduring all misgivings as to the propriety of going behind Act X of 1859, he founds his proposals for the

* The substance of the Bill receives this position; but in paragraph 4 of the gross under review the Lieutenant-Governor fears that the sense of insecurity of the cultivator would be lessened if the rent suits in the Civil Courts were deprived the summary procedure of rent-suits officers of that intimate acquaintance with the rural economy of Bengal possessed by their predecessors.

† The Secretary to the British Indian Association writes (Rent Papers III, page 278):—

"Should the Government, however, determine to legislate on the subject, the Committee would respectfully suggest that legislation ought to be based on the results of enquiries conducted by a commission or any other competent authority into the circumstances and economic condition of each district in Bengal and Behar. An enquiry of the nature mentioned would assist to throw light on the peculiarities of each district, the necessity of which has become as manifested by local custom and usage in each district, the customary conditions regulating rent, and the changes, if any, introduced by the latter laws, and would enable Government and the public to judge whether any and what changes are necessary in the existing law. The danger of passing a body of wide and general legislation, and introducing uniformity throughout the Lower Provinces in a variety of matters dealt with in the Bill without taking into account past and present differences, is very great. If any members are needed to organize the Commission of this description, it was the hope of the people of Bengal that the Hon'ble Committee on some of the Bills in pursuance questions submitted by the Commission."

Mr. Woodie, Collector of Muzaffarpur, has expressed the opinion that there should be separate legislation for Behar; and so has Mr. Reynolds. Rent Papers III, pages 210, 11, page 307. Mr. Edgar of Chumparun says that Mr. Reynolds is supported in this by no one but Mr. Edgar knows all officers of Behar experience. The whole of Part VI of Mr. Edgar's report is well worth reading (Rent Papers III, pages 753-6).

‡ Bill III, Section 103. § Bill III, Section 19. Explanation IV, clause (c).

recognition of the occupancy right on a bold and broad view of the custom of the country, and on the expediency of preserving the great mass of the cultivators from the precarious position of tenants-at-will. Maintaining the rights acquired before the passing of the proposed law, he would declare that every resident ryot has a right of occupancy.* This right is not to be defeated by contract; it is to be heritable and transferable by sale, gift or devise, or by sale in execution of any decree. Mortgage is to be freely permitted; and the occupancy ryot may sub-let. But transfer and demise are not altogether unrestricted; ryots to whom the interests of occupancy ryots are transferred can obtain an equal tenant-right only with the written consent of the zamindar or tenure-holder †† on registration of a transfer by private sale, the zamindars can exercise an option of purchase ‡; and sub-letting is discouraged (1) by limiting the money rents of under-ryots to thirty-five per cent. of the average annual value of the gross produce, § and (2) by requiring the occupancy ryot to obtain the landlord's permission to sub-let or, if a sub-lease be granted without such permission, by authorising the landlord to distrain for arrears due to himself, on the produce of the land so demised. Regarding the grounds and limits of the enhancement of rent, the Lieutenant-Governor has generally accepted the proposals of the Commission. The only important alteration is the addition, in accordance with the existing law, of a declaration that occupancy ryots, not privileged to hold at fixed rates, shall be entitled to hold at rates which are fair and equitable.¶ The procedure for the enhancement of rent is very extensively modified; the alternative resort to the Civil Court or the Collector is abolished, and the distinction between a enhanced rent-roll and a settlement rent-roll foregone. The principle followed is to assign those inquiries which, as experience has shown, the Civil Courts cannot conduct with success, to the more appropriate agency of the revenue staff, but to leave the results of economic investigation to be applied in particular cases by the ordinary judicial tribunals. Collectors are to be empowered by *Gazette* order to prepare tables of rates for defined areas, showing the rates of rent equitably payable by ryots having a right of occupancy for specified classes of land. It will then rest with the superior holders to sue before the civil courts to enforce these rates unless accepted privately by agreement; and the Courts are to be bound by the tables, or I may, I think, say with accuracy, by the Collector's assessment, subject to certain limitations, of which the most important is that lower rates, enjoyed by custom or contract, are maintained in favour of the ryot. It is anticipated** that in a reasonable term of years it may, by this plan, be possible to determine throughout Bengal the rates of rent which should equitably be paid in the different districts. Finally, the concessions or advantages which Sir Ashley Eden would extend to the zamindars are, *first*, the restoration of the law of distraint (which, as already said, the Commission proposed to repeal), but in a modified form, so that the distraint shall be made on application to a Court of Justice; *secondly*, the retention of the abbreviated Small Cause Court Procedure, as elaborated by the Rent Commission; *thirdly*, the power of selling occupancy holdings for arrears of rent summarily and without decree, like revenue-paying estates or *patni* tenures,—a power which, however, will be granted only to landlords who, in certain matters, do their duty by their ryots; and *fourthly*, as an executive measure, unconnected with the Bill, the establishment of special rent Courts where the number of rent suits is large.

General policy of the Lieutenant-Governor.

23. I need not enter here upon the special provisions for Behar, as I have written a separate paper on that part of the case. I shall remark more fully below upon the Lieutenant-Governor's proposals; but it may first be convenient to reproduce in Sir Ashley Eden's words his statement of his policy. In the letter of July 1880,†† with which the report of the Commission was submitted to the Government of India, it was observed, in reference to the Report, as follows:—

"Sir Ashley Eden himself has no doubt that some such general revision of Act X of 1859 is urgently called for in Bengal; and, however distasteful some of the proposals which are brought forward and advocated in the papers may be to extreme partisans of the zamindars, he believes that, in the interests of Government, of the landowners themselves, and of the agricultural community at large, it is very desirable, even at this late day, to define and strengthen the position of the great mass of cultivators, while giving landlords a

* Bill III, section 23. † Bill III, section 10 (2). ‡ Bill III, section 36. § Bill III, section 30. ¶ Bill III, section 71. ‖ Bill III, section 22 (c). ** Home Papers IV, page 15. †† No. 2207, dated 13th July 1880.

reasonably cheap and effective procedure for regulating and revising rents, and recovering their just dues. He would like to see the Bengal ryots, as a class, secured in the enjoyment of those rights which the ancient land law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the occasional pressure of bad times. He would, at the same time, not seek in any way to diminish or encroach upon the existing emoluments of zamindars or other rent-receivers. On the contrary, he would like to help them to realise their rents punctually; and even where these are now excessive, he would not seek to interfere to reduce them. He would substitute for the present large and uncertain power of enhancement which the law seems to give to landlords, but which they are quite unable to utilise, a reasonable system of regulating rents, under the control and direction of Government officers, such as the universal custom of India originally favoured and recognised. The zamindars would be benefitted to share in the growing prosperity of the country upon fair terms; and though they will not have all that they claim in theory, they will have a great deal more than they are now able actually to enjoy in practice. They will cease to feel the irritation of baffled desire, while their tenants will cease to look upon them as their natural foes."

Remarks on the above.

24. Noting upon the letter containing these remarks and upon [illegible] of the Commission, Sir Charles Aitchison wrote a year ago: * "For [illegible] while thoroughly sympathising with the object aimed at,—an object to [illegible] Government pledged itself at the permanent settlement, but which it h[illegible] yet accomplished,—I believe many of the principles laid down in the [illegible] perfectly revolutionary, and such as no Legislative Council, whether [illegible] or Local, will pass, and to which the Executive Government should no[illegible] imprimatur, if it gives it at all, without the fullest and most mature deliberation." It may be gathered from other portions of Sir Charles Aitchison's notes that some, at least, of the objections which he may have been disposed to raise would have been met by the present frame of the Bill. Probably the first impulse on recognising Sir Ashley Eden's aim will be towards a sincere and cordial hope that it may be practicable to give effect to it. The benefits which in the present case, fixity of tenure, and security against undue exaction would confer on large numbers of men, attract the heart and stir the imagination. The Governor General in Council was pledged at the time of the permanent settlement to enact such regulations as he might think necessary "for the protection and welfare of the dependent talukdars, ryots, and other cultivators of the soil†"; but do the provisions now proposed involve no rupture of any pledge with the zamindars? If the lands of the Government are not fettered by constitutional promises, does justice permit, or expediency require, that contracts shall be set aside so far as the proposed law would ignore them? Looking to the historical dissertations and the evidence of existing practices that these papers contain, is it sufficiently clear that the customs of the country have been correctly interpreted, and will not be improperly infringed? Granting that the Government is free to intervene between the zamindar and talukdar and ryot, and that some intervention, beyond that of 1859, is requisite, do the circumstances demand the kind and the degree of intervention which the Bill, if enacted, would bring to pass? The extract in the preceding paragraph does not refer to the question, also pressing for solution, of the transferability of the ryots' holdings; and the last sentence postulates a chronic opposition between zamindar and ryot which may indeed be common, but can hardly be universal unless we assume that kindliness, mutual forbearance, fair dealing, and good management are absolutely unknown. There is an economic presumption in favour of freedom of exchange; but will the limited transferability here in view be a boon to the ryot without being a blow to the zamindar, and will it increase prosperity without breaking too abruptly with tradition?

The three F's as dealt with by Sir Ashley Eden.

25. Such are some of the difficult issues raised by the present recommendations, involving the new familiar problems of fixity of tenure, fair rents and free sale, only so metamorphosed by Eastern conditions that supposed analogy would be a perilous guide. Fixity of tenure Sir Ashley Eden would extend to all settled ryots; fair rents he would secure partly by an assessment through the Collectors of rent rates for specified local areas, partly by laying down, as positive law, rules based on a percentage of the net collections or on a proportion of the gross produce and intended to assure to the tenure-holder or the ryot an equitable share in the rental or the crop; free sale the Lieutenant-Governor favours, but he would nevertheless qualify it by restrictions designed to keep the occupancy right in the hands of the ryot class, to

* On 30th November 1880. † Article VII, Regulation I of 1793.

prevent the transfers of holdings to money-lenders, and to protect landlords against the occupation of their estates by the tenants of hostile zamindars.

The effect of the Permanent Settlement.

28. If we have to follow the Lieutenant-Governor in forming conclusions as to whether the principles of the Permanent Settlement would be violated either by a general declaration that occupancy rights are vested in settled ryots or by the intervention of the Government for the purpose of fixing rents, we shall necessarily be involved in two historical inquiries. *First*, we shall have to come to some opinion as to the rights and status of the cultivating classes in 1793; and *secondly*, we shall have to consider whether the Government of that time deliberately altered these rights; or, to put the same question in a briefer form, the relative positions of the zamindars and ryots before and after the permanent settlement must be determined. The Rent Commission acknowledges* the difficulties which surround the subject at this distance of time,—the indefiniteness of the ryots' rights before 1793, the omission to ascertain them at that period, and the disappearance of evidence during the lapse of nearly a hundred years. It is, of course, impossible to arrive at any independent judgment upon this matter without an examination of the papers and Regulations connected with the proceedings of 1793, and many other documents referred to in these volumes. I have not, however, as yet been able to enter upon that very lengthy and difficult task; and the remarks about to be made are based exclusively upon the facts and arguments brought forward by the Government of Bengal or its officers or by private persons or Associations in connection with the present case. Subject to this explanation, I anticipate that the Government will not find much difficulty in generally accepting the view stated in paragraphs 19 and 20 of the Bengal letter under consideration,—a view which substantially coincides with opinions expressed by the Famine Commission, by Messrs. O'Kinealy, Mackenzie, Reynolds, and Phillips, and is believed to be that of the majority of Bengal officers who have paid attention to the subject.† The ryots of 1793 had

* Report, paragraph 44.

† I have collected the following expressions from the papers in confirmation of what is said in the text:—"The zamindars, being then considered in their public character, conferred to collect the rents from the cultivators and pay it over to the State." "Whatever differences of opinion there may be as to the other rights which belonged to the ryots in 1793 * * * we think there can be no doubt as to one right, that is the right to have the rents fixed by a table of the pergunnah payable by the ryot determined by Government." "We entertain no doubt that the ryots of 1793 possessed substantial rights." Report of the Rent Commission, paragraphs 42, 44, 45. The Commission describes "rent revenue or rent" in Bengal with the Government share of that revenue. "The ryot should be appraised in the account and land-tax produce of retaining the ground occupied by him so long as he pays the rent justly demandable."—Colebrooke, quoted by Mr. Mackenzie, II, page 305. "The resident ryots have all established permanent hereditary right in the soil which they cultivate, on their standing ready to pay the zamindar's demand, and on a rich pergunnah."—Bengal Government letter of 7th October 1815, II, page 396. Mr. Harrington says that the customary estate prevailing at the time of the permanent settlement (except in Dinajpur and the 24-Pergunnahs) "each vested the cultivators in the waste some, if not all, of the lands they left fit for cultivation on the same terms as the zamindar's ryots." "Each State took the land, considering one-tenth of its assets to be zamindar, and by the permanent settlement, the State made over its share for a contract sum to the zamindar." II, page 406. "It does not appear" from certain passages "quoted "that the instrument ever in terms recognised and vested with the zamindar a proprietor, to deprive the ryot of the perpetual and undisturbed possession of his lands, or the subjection of the remainder of his produce after he had satisfied the Government demand." They who are acquainted with the papers of these times will remember that opinions underwent many and marked changes as to the persons who should be considered the real owners, whether the ryot, the zamindar, or the State; but from the time when the zamindar was treated as proprietor, both zamindars and farmers were prohibited from arbitrarily dispossessing the ryots."—Mr. O'Kinealy, II, page 428. "Our intelligible, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivators of the soil duly paying the rent should not be dispossessed of the land be occupied."—Opinion of the Court of Directors in the permanent settlement, quoted by Mr. O'Kinealy, II, page 422. "All that the Permanent Settlement did "was to give subjahars, subject to custom, a perpetual lease of the lands at a fixed assessment and subject to the restriction of State intervention if the conditions of their leases were violated to the injury of the ryots."—Mr. O'Kinealy, II, page 424. "Under the practice of abolishing the Government assessment from above downwards, and in the general absence before 1793 of any body like our English landlords, there was in fact no such thing as "rent" in the English sense, so far, at least, as the hereditary ryots were concerned."—Mr. Mackenzie, II, page 278. "I much prefer the simplicity of a return to the customary practice of protecting against ejectment the true resident ryots (meaning thereby all settled cultivators), so long as they pay back the value my land-tax fixed land-tax to demand, but the same had come in antiquity from time to time as fair and equitable rates for the land, according to its capacity to produce."—Mr. Mackenzie, II, page 279. The ancient constitutional law of the country the right of occupancy was inherent in the status of the hereditary cultivator."—Mr. Reynolds, III, page 1003. See also Mr. Reynolds' note IV, pages 1026-1027. "The term 'actual cultivator' is not" does not mean the absolute proprietors of the soil, as against the ryots. The zamindars were to take the Government share of the produce as their own, yielding a fixed assessment to the true tenant in exchange."—Mr. Phillips, IV, page 1260. "There is, indeed, good reason to suppose that for many years after the permanent settlement, the relations of the so-called landowners, who paid the revenue, to the occupiers, who paid the rent, was regarded rather as that of a superior to an inferior cooffeiterry in the same respect than as that of landlord to tenant in the ordinary acceptation of the terms."—Famine Commission (Sir) to Rent Papers IV, page 1265. I may add here a general list of references on the subject of the Permanent Settlement:—*Report*, pages 189-259; *Rent Papers* I, pages 19-24, 34-5, 97, 99, 100-2; II, pages 258-64, 361, 367, 382-453, 458-67, 473, 474-76; III, pages 413-21, 465-80, 485, 486, 489, 526, 587, 603, 616, 641, 690-93, 695, 698, 943, 945, 980-84, 1033-34, 1045-6. See also Mr. Bonnerjee, III, pages 861; Mr. Cochrane, III, page 861; and Mr. Westmacott, III, page 911; IV, pages 9-10, 13-14, 197-201, 1043, 1051. The case is best stated on the one side by Mr. O'Kinealy (II, 418-64), and on the other, perhaps, by the Behar Landholders (III, 453-66), and Mr. Moore (III, 689-91).

substantial rights; the zamindars, who were Rajas and officials over them, had in former times collected a land tax not a rental; but at the settlement the demand of the State upon the zamindars as collectors of its revenue was commuted into an annual payment fixed in perpetuity, and language was then and afterwards borrowed from the rural economy of England and from English law which assured the zamindar in the possession of more extensive and more permanent rights than those of a tax-gatherer. Whether the ryots enjoyed *proprietary* rights under Native Administration or before the British Administration took a fixed shape, is probably a somewhat barren subject of speculation. Any such expression implies the existence of determinate rules of positive law, of settled Government, and of judicial tribunals giving effect to a legal system of some maturity. But in a society raised, indeed, above barbarism, yet where a legislature and courts of justice, acting upon precedents and statute law, had not yet grown up, private relations would depend upon an intermittent 'positive morality,' upon a fusion of custom and opinion blended with and operating at the mercy of the arbitrary will of the ruling power or of individuals possessing the might to enforce their desires upon others. To seek amid the vague relations so composed for any definite notion of proprietorship, as now understood, is to project upon the facts of an archaic society an idea of modern times. The picture, if conjured up, would correspond to no reality; it would be a creation, a preconception of the mind, fashioned upon passing experiences. But if there is one point which the discussions in these papers seem to have established beyond doubt it is that after the Permanent Settlement the absolute disposing powers of an English landlord belonged neither to the ryots nor to the zamindars. The rents of the zamindars are not rents in the sense of the political economists; the zamindars are not absolute proprietors like English owners in fee-simple; the Government, far from undertaking never to interpose its authority between the zamindars and the ryots, distinctly announced its intention to protect the latter, and reserved its right to prevent them "from being improperly disturbed in their possessions or loaded with unwarrantable exactions." Without attempting to reconstruct the entire body of rights belonging to the cultivators, as though it had been everywhere a fully organised and uniform frame, it will probably be allowed that settled ryots were entitled to remain in occupation of their holdings so long as they paid the established revenue, now become the rent; and further that the Government of 1793 would certainly have been justified in fixing the *pargana* rates of rent if it had thought it expedient to determine them. Whether at the present day the Government can properly exercise in Bengal the power of fixing rent rates, and, if so, whether the proposals of the Bill do not constitute too rigid a line to circumscribe about the fluctuating forms of local custom, are questions which I do not propose to discuss fully in this paper. My impression, on reading these volumes, is, *first*, that the Government never divested itself of such a power; and *secondly*, that the reservation of authority to protect the subordinate holders of land necessarily implies its existence. I think the ryots can only be efficiently protected by the definition of their rights, which, Act X notwithstanding, have never been defined; and no definition of rights which failed to regulate the enhancement of rent could possibly carry with it any valuable protection.

The Occupancy Right.

27. Large though the measure is, I expect that the Government will be able to regard the proposed extension of the right of occupancy without apprehension; and that the principle of the Lieutenant-Governor's Bill being accepted, the discussion here will mainly turn upon the incidents which should be annexed to the right and the mode in which the persons who should possess it ought to be ascertained. The Lieutenant-Governor believes that his views as to fixity of tenure* will be more or less acceptable to the zamindars. "As a matter of fact," says Mr. Monro, the Officiating Commissioner of the [illegible] ency Division, † "the ryots enjoy fixity of tenure. So long as they pay their rents zamindars do not think of evicting them; and even when they do not pay their rents, eviction is about the last means a zamindar resorts to of recovering his dues. Ryots practically have a right of occupancy, although such right in many cases is not defined by law." The testimony of the East

* Rent Papers IV, page 307. † Rent Papers III, page 697.

Bengal Landholders Association* and of the British Indian Association† is to the same effect. "Zamindars, as a rule, generally do not oust their tenants unless they persistently fail to pay rent or prove obnoxious in other ways, and as a rule they prefer to keep old tenants in possession of their lands." The Conference of the Zamindars "submit that it is not the interest of a landlord to oust his tenant; he takes such a step in the case of extreme necessity." I have searched these papers in vain for any statement of the number of tenants who already enjoy the occupancy right; but though, looking to the time which has elapsed since Act X of 1859 was passed, they must be numerous, it may not be easy for them to establish their rights when brought to the test of a judicial decision. Mr. Nolan‡ holds that the rate of mortality among occupancy tenures is extraordinarily high, particularly in Eastern Bengal; and if the Bill may tend to expedite some transitions of an accustomed type, it might arrest others which were and are wholly unintended. Under the twelve years' rule of Act X, tenures may, perhaps, be broken even more readily than they may be won.

Occupancy right in Behar.

28. Moreover, the historical method of inquiry followed by the Rent Commission might, very legitimately, be supplemented by the production of contemporary evidence from parts of Bengal where the old state of things has, to a great extent, survived. "In large tracts of country," says Mr. Harrison,§ "especially Behar, Act X has scarcely yet penetrated the surface of the rent system." "The cultivators of this country," Mr. O'Kinealy¶ tells us, "have followed, and now do follow, their own customs. They have very few rights founded on contract." Now in Behar, where the preponderating strength of the landlords amounts to a positive danger, there is a very remarkable belief on the part of such experienced officers as Messrs. MacDonnell, Wardlaw and Edgar, that the majority of the ryots are entitled to a right of occupancy by village custom.** Mr. Finucane†† agrees with them: and he has so well expressed the view that may, very possibly, be taken by the Government, that I will here transcribe a rather long passage from his report: "No principle in land legislation can be wiser than that of recognising the customs, ideas, and feelings of the people for whom we are legislating, and I think one of the strongest arguments in favour of recognising occupancy rights by law in all cultivated lands other than the zamindar's *nij-jot* or *zerait* lies in what I maintain to be a fact, *viz.*, that both ryots and zamindars do themselves at the present time think and act as if they thought that an occupancy right is inherent in the position of a tenant on *ryoti* lands, whether he be one year in possession or twelve being quite immaterial. * * * do not say that ryots are not sometimes arbitrarily evicted (a great many arbitrary things are done in Behar), but what I do say is that no tenant is arbitrarily evicted who does not feel that a wrong is being done to him, and that no *native* landlord evicts a tenant who is willing to pay his rent without feeling that he is doing what, according to the customs and ideas of his countrymen, he should not do. * * * * The traditions and feelings of the people (on which Act X of 1859 has really had very little influence in Behar) are a surer guide to the meaning of the regulations of the permanent settlement (which were framed on information gathered from personal enquiries among the people) than the interpretation of statutes or the collection of reports. I have no hesitation in saying that if the feelings, traditions and *conduct* of the people of Behar may be taken into account in determining the meaning of the common law of India and of the regulations of the permanent settlement, their feelings, traditions and acts entirely bear out the interpretation put on these regulations by Messrs. Mackenzie and O'Kinealy, and they are, it seems to me, utterly inconsistent with the idea that a zamindar now has or ever had a right to evict a tenant" (Mr. Finucane means from *goli* land) "as long as he pays the customary rent." In proportion as administration is weak (and we have the testimony of Mr. Edgar‡‡ that it should be stronger in Behar), headstrong and rapacious men will, in

* Rent Papers III, page 864. † Rent Papers III, page 897.

‡ The Famine Commission (Volume II, page 116) observes:—"In Bengal the broad classification into privileged and unprivileged tenants still exists. * * * * * As, however, there has been no fixed survey, and no record has been made of village rights, it is impossible to state either the number or the average area of the holdings of each class of tenants."

§ Rent Papers III, page 715. ¶ Rent Papers II, page 405. ** Rent Papers II, page 623. †† Rent Papers III, page 747. ‡‡ Rent Papers III, page 907. §§ Rent Papers III, pages 748-9.

practice, ignore the standard of right and wrong which is acknowledged in the society surrounding them; and in proportion as primitive usages retain their vitality, law and morality are the less distinguishable. "The subordinate holder," says Sir Henry Maine,* "who in India states that the superior holder has the power to do a certain act, but that he ought not to do it, does not make an admission; he raises a question of the utmost difficulty." This, it will be seen from Mr. Finucane's report, is exactly what the ryots said to him about eviction in Darbhanga. If the proposed legislation would seem just to the general moral sense of the community in Bengal, there need be no hesitation in prosecuting it, because it would disappoint high-handed men who commit wrong to their own advantage.

Definition of occupancy ryots.

29. Assuming, then, that the Government of India, concurring with the Lieutenant-Governor, and, substantially, also with the Famine Commission, will decide that there is no bar to legislation for the establishment of tenant-right, it remains, as Sir Ashley Eden notes in the 21st paragraph of his Secretary's letter, to define the class of ryots whom the legislature should undertake to protect. It is submitted that the twelve years' rule of Act X of 1859 has been very successfully impugned in these dissertations. The rule appears to have been founded neither upon any ascertained custom nor upon any broad interpretation of the history of property in Bengal. However expedient may be the resort to prescription when there is no other method of settling a vexed question of right, there seems to be good reason to believe that Act X of 1859 has not operated fairly and evenly. The view of the Lieutenant-Governor, that the right of occupancy was inherent in the status of the resident ryot, will probably be accepted as sound. Certainly it could not have been the deliberate design of the legislature that the occupancy right should come to be regarded as a privilege to be conceded or withheld at the discretion of the zamindar†—"a theory," in the opinion of Mr. Reynolds, "entirely unknown to the common law of India and to the old Regulations."

Determination of the class analogous to status of the settlement holder.

30. Taking the occupancy right to be a part of the status of the settled cultivator, and bearing in mind the historical connection between revenue and rent in Bengal, the problem of determining the specific individuals who shall be held entitled to fixity of tenure presents a close analogy to the question which has frequently arisen in other provinces,—who shall be recognised as Government ryots or peasant proprietors, or with whom shall the settlement be made? It is hardly necessary to guard this remark by adding that there is, of course, no question here of the settlement of the land revenue; and that this very point was extensively debated in the discussions which preceded the decision of 1793. It is merely meant that, in other provinces as now, it may be, in Bengal, the Government is called upon to determine what classes shall enjoy certain privileges connected with land, amongst which the most important is continuous occupation so long as certain dues are paid. Where the minute local investigations of a settlement are undertaken, though there is often much preliminary deliberation, there is seldom any great practical difficulty in selecting the particular people upon whom the principal interests in the soil shall be bestowed. Certain broad principles are either laid down for the guidance of the settlement officers or are spontaneously followed by them; the caste, the tribe, the known hereditary position of the occupants, the history of the country side, the practically unanimous verdict of the locality, indicate with sufficient precision what groups of villagers come within the general rules; and in cases of doubt the settlement officer submits a detailed report upon the particular circumstances, and thus enables the executive Government to come to a decision upon conflicting claims.

No local investigation proposed as to tenant-right.

31. But here, though it is intended to settle rent rates locally from district to district, no such local investigations are proposed in regard to tenant-right. The first criterion instituted by section 19 of the Lieutenant-Governor's Bill is residence in the village‡ where the ryot holds or cultivates land; and the village is to be the village of the revenue survey maps of Bengal. But the limits selected as village boundaries by the Revenue

* "Village Communities in the East and West," 3rd edition, page 161.

† Rent Papers IV, page 382. Mr. Finucane, inspection note—ibid III, pages 606-7.

‡ For reasons for making the village, instead of the estate, "the envelope of the occupancy rights," see Mr. MacDonnell, Rent Papers III, page 127. This will secure the ryot against the effects of partition.

arrayces were not laid down with reference to customary rights in land. They were determined, partly, we may suppose, on grounds of local tradition, but partly also for reasons of mere convenience. Mr. Dampier* mentions exceptional cases in which the lands of several villages have been surveyed within one boundary; and Mr. Reynolds says† "the Survey boundary was not made with any idea of its forming a definition of residence, and villages which are really distinct were sometimes lumped together merely because it was more convenient to show them in one map. It would further have to be considered how such a definition" (as is proposed in the Bill) "would meet the case of lands (technically called *ghátia* lands), belonging to one village but situated within the survey boundary of another village. Such plots of land are extremely common."‡ Even granting that village residence carries with it occupancy right, is it equally certain that such right ought everywhere to be susceptible of acquisition in the landlord's *khámár* or private lands; and should it be recognised as freely in newly reclaimed tracts as in old settled parts of the country? The second criterion is even more arbitrary: it accords the occupancy right after three years' tenure of lands not more than two miles off the fixed habitation of the ryot. Surely there is some inconsistency in declaring fixity of tenure to be inherent in the status of the resident ryots; and then in proposing to decide what persons are to enjoy this status by the necessarily capricious test of distance, or by reference to the maps of a survey which was not undertaken for the purpose of solving this question of right. Whatever determined the status, it is not even alleged that it depended on a two-mile rule, and it could not possibly have depended upon a delimitation of villages which was begun in 1835 and practically completed about ten years ago.

Khámár and ryoti lands.

33. The Lieutenant-Governor in paragraph 25 of Mr. Mackenzie's letter seems to anticipate that the provisions of the Bill regarding *khámár* ryoti lands.

* Rent Papers III, page 903. † Rent Papers III, page 9004.

‡ It is not clear whether Mr. Westmacott, Collector of Nadiá, in speaking of revenue survey maps as of unprofessional maps prepared for local purposes. His view he says on the present matter is worth quoting:—"What are wanted are accurate (village) maps of the thánás (village boundary) maps. I find, often groups of villages all known by different names and having nothing to do with one another, the dividing zones being absolutely unknown to the people. In the newer alluvial formations there are often not sometimes eight or ten miles in length or breadth. The people have no notion of the extent of their boundaries, the names of which seem to change in the course of years." Rent Papers III, page 903.

The following extract from the Bengal Administration Report for 1872-73 gives a good account of the principles on which the Revenue Survey was carried out:—

"Almost the whole of these provinces have now been surveyed so as to show the boundaries of each village and field, but there has been no field measurement except in a few limited tracts. There is a Demarcation Department, whose business it is to define the boundaries of villages and fields, and to settle and record disputes about boundaries. The ordinary scale of the maps prepared from this survey is 16 inches to the mile. All disputes regarding boundaries are decided by the Settlement officers.

"Where the whole of a village belongs to one estate, nothing but the outer boundary of the village has to be defined and surveyed, but in a very large proportion of cases there are lands of more than one estate in the village, and the lands of each estate are generally scattered all over the village, and not confined to one portion. Thus a village may belong to five estates in a village, but they may be contained in forty, fifty, or even double that number of separate plots. Each of these plots has to be separately defined and surveyed by the demarcating surveyor. It will be found to which plot of land each of the different owners are entitled, and the demarcator then marks the position of a boundary pillar with a lengthy operation. Yet take Hooghly as an example. There were in round numbers 4,000 villages therein demarcated. In about 1,700 of these the whole of the village belonged to one estate, and no labour of demarcation was necessary; in the remaining 2,300 no less than 80,000 plots had to be surveyed owing to the intricacies of lands of different estates.

"The demarcation is followed by a professional survey, whose business it is to make a scientific survey of village boundaries, and also a map showing the geographical and topographical features of the country. The whole of the work, both of the demarcating and the professional survey, has been carried out at the expense of Government, although the Government receives an additional revenue, and no direct advantages of any kind from the process. The surveyors, in making the survey of the village boundaries, are guided by the marks put up at time of demarcation at every bend and turn of the boundary. Unfortunately there are in permanent marks round the boundaries of villages as strike in Bengal, and no provision exists for compelling landholders to set them up and leave them on. The consequence is that the marks have been obliterated, and the use of the survey for practical purposes in 1872 much lost.

"The revision letter how to provide for the erection and maintenance of boundary marks has since been received by the Bengal survey Act. No. I of 1875, see sections 14, 15, 19-21, 46, 52, 53, 56.

4 *Khámár* literally means a piece of land, a plot, generally forming a part of a village, to which all the rents are brought in to channel, and from which they cannot be removed till the landlord's claim is settled." It is "land of which the owners use and in kind, as of which the produce was divided to determine claims between the cultivator and the landlord." Sir George Campbell says that it "applied also to lands originally waste, but which, having been brought into cultivation, were retained by the zamindars as their own lands, or were let out on a grain rent." *Ryoti* is from *roi*, rose, peculiar, and for cultivation. It means "lands cultivated by the proprietors or their servants by the immediate, or by hereditary, tenants, also lands allowed to be set apart for the private use or income of a zamindar." Sir (from *sar*, a plough) is "a name applied to the lands in a village which are cultivated by the hereditary proprietors or village zamindars themselves, as their own special share, either by their own labourers and at their own cost, or by tenants-at-will, not being let to tenure or farm; these lands were sometimes allowed to be held at a favourable assessment or were cleansed so as to provide *Nánkár*" (free-site land and *kár* business) "or subsistence for the proprietor." The word *ryoti* is connected with a root which means to nurture, feed or protect. It originally signifies a cultivator, and is especially applied to the agricultural population in the sense of a cultivator or peasant. *Ryoti lands* is an expression often used in Bengal to denote "land of which the revenue is paid in money, in opposition of the *khámár* lands, of which the revenue is paid in kind." (*Wilson's Glossary*). But on such distinction would, I understand, be current in Behar; and I imagine that in Bengal also the true distinction is that between village lands and the private lands of the zamindar.

or private and *ryoti* or village land may occasion some surprise or give rise to objection as being violently opposed to English ideas of proprietary right. Looking to Indian experience, I should venture to anticipate that many officers would here feel themselves to be entering upon unusually firm ground. Indeed, it had occurred to me when reading the papers, and I think quite independently, that a possible solution of the primary difficulty in defining occupant ryots might be to make the description of land the test of status, to confer fixity of tenure upon all occupants of *ryoti* land, and to refuse the occupancy right in the *khámár*, *sij-jot* or *sir* of the proprietor. I have since found that some such proposal was entertained by Messrs. Reynolds and Mackenzie.* Sir Ashley Eden observes "it is only land in which the zamindar has continuously maintained his private and special right that ought at the present day to be recognised as his individual property." But turning to the Bill to ascertain in what way it is to be determined which are the lands to be now recognised as *khámár*, I find that, in Bengal Proper, all the lands of a village are to be presumed to be *ryoti* lands until the contrary is shown,† although it is notorious that most or a great part of the *ryoti* lands were originally *khámár*; but in Behar ‡ the *zeráti* lands (corresponding to the *khámár*, *sij-jot* or *sir*) are to be distinguished by survey and demarcation. The conversion of village into private lands stands self-condemned; on the face of it, there is an appropriation by an individual of privileges customarily enjoyed by others. The principle of the rules in the Bill for the prevention of this process will probably command sympathy and assent. But if the presumption proposed in Bengal Proper be act side by side with the procedure contemplated for Behar, there can scarcely be two opinions which method of arriving at or influencing decisions will operate more fairly towards the zamindar.§

Enhancement of rent.

33. Much that is said in the 20th and 27th paragraphs of Mr. Mackenzie's letter will doubtless be accepted by the Government as beyond question. In whatever way the class of occupancy ryots be defined, they must have a beneficial interest in the soil, and this interest, in the mass of cases, does not extend to immunity from enhancement. Whether it was ever meant that the *pergunna* rates of 1793 should be permanent rates, is not, at this date, a practical question. Enhancement is now established both by law and custom. In these circumstances, there are, I think, three courses from which to select: (1) the grounds and limits of enhancement being laid down in the law, the rest might be left to voluntary litigation; (2) the grounds and limits being so declared, the executive Government might assist the Courts by providing them with certain data to form an element in their decisions; (3) the executive Government might undertake, by a complete sub-settlement, to fix the rent of each occupancy ryot throughout Bengal.‖ The last course is, in reality, that which best consists with the theory of rent as no more than the ancient Government revenue assigned to the zamindars in exchange for a permanent quit-rent; but, to pass over numerous other objections, there is one which is, perhaps, absolutely conclusive. A general and authoritative revision of rent rates could not fail to reduce many existing incomes; and, for this reason, if for no other, it would probably be out of the question to attempt it. The first course is that taken in Act X of 1859, and it cannot be said to have succeeded in the past. It may be admitted at once that the Courts have failed to adjust rents satisfactorily under that Act, the cause being that they are not a proper agency for the conduct of economic inquiries. The second course is that proposed by the Lieutenant-Governor, and has been already sufficiently characterised in referring to the Collector's Table of Rates. I am disposed to believe that the Government will accept the proposals under this head as a novel but highly ingenious expedient for meeting a difficulty of great magnitude. The power reserved to the Lieutenant-Governor of choosing the localities in which Tables of Rates shall be framed, frees the mind from anxiety respecting this portion of his measures. The assessment will not affect the whole country at one and the same time; and if there is failure or agitation, the extension of the operations can be very precisely restricted within such limits as prudence may suggest.

* Bent Papers IV, page 318. Mr. Edgar also, writing in Chumparun, a Behar District, says much the same thing (Bent Papers III, page 240), and so does Mr. Fiveasm (*Ibid.* III, page 307). See also *supra*, page 28. † Bill III, section 19 (*b*). ‡ Bill III, sections 71-81. § See, as to this, Mr. Buswell, Collector of Darbhanga, Bent Papers III, page 305.

‖ I do not mention here the complicated alternative procedure of the Commission. That proposal has been completely abandoned, and I do not think a voice would now be raised in favour of reconsidering it.

Transferability of ryots' holdings.

34. The paragraphs of the Lieutenant-Governor's letter which have just been reviewed relate to security of tenure and enhancement of rent; but transferability—the incident of tenant-right which next after the claim to equitable rates has most consequence—is discussed in connection with the details of the Bill. Unfortunately the volumes now in the hands of Hon'ble Members are not complete in regard to this question. The Rent Commission* reached its conclusion as to the limits within which an occupancy holding should be transferable on a consideration of the arguments stated in the Appendix to Mr. Field's Digest. There is only one copy of the Digest here;† and it would be premature to take up the subject without reading Mr. Field's admirable note. Moreover, there is a great deal of evidence and correspondence on the matter in our previous proceedings which will be submitted in due course in the usual way. I have collected the references in the Rent Volumes,‡ but they really add little of importance to the note and papers just mentioned. Mr. Field says§—"Local customs of transferability have been well established in some estates and in some parts of the country, whilst in other parts they are in various stages of formation, and in many places they have not come into even an embryo existence. That the right of occupancy, which is the creature of the Statute, is not transferable *per se*, and apart from the holding as affected by local custom, has been decided by a Full Bench of the High Court. Such being the present state of things, and the tendency being for all interests in land to become alienable, the question is, should the Legislature step in, anticipate the progress of this tendency, and declare that every holding in which a ryot has acquired or shall acquire a right of occupancy shall be transferable?" I fully agree with Mr. Field that alienability is not an ordinary incident of landed property in its early stages, and that the tendency of development is to free the soil from its natural and primitive incumbrances. "Finally," writes M. Emile de Laveleye,‖ after sketching the chief phases in the growth of proprietary right, "individual property appears. It is, however, still tied down by the thousand fetters of seigneurial rights, *fidei commiss*, *retraits lignagers*, hereditary leases, *flurzwang* or compulsory system of rotation, &c. It is not till after a last evolution, sometimes very long in taking effect, that it is definitely constituted and becomes the absolute, sovereign, personal right, which is defined in the Civil Code, and which alone is familiar to us at the present day." But if the process of loosening the archaic bonds proceeds by a natural law, I think the presumption is, not that the Legislature should intervene to accelerate a spontaneous evolution—for normal growth needs no artificial stimulus,—but rather that if any interposition be required, it would be to moderate any undue strain upon the changing society caused by the disruption of moribund obligations or the dislocation of ancient claims. For the reasons given above, and also because the subject cannot be adequately treated without a disproportionate space in this note, I must ask leave to reveri, hereafter, to this part of the case. I will only say now that different considerations apply to (1) sales in execution for decrees of rent, (2) sales in execution for other decrees, (3) summary sales for arrears of rent without decree, and

* Report, paragraph 23. † Others were sent for some weeks ago.

‡ The papers which will be sent up with the file are the Proceedings, Revenue, Agricultural and Commerce Department, February 1879, Nos. 11-20. See 2. People proposed to make the right and interest of an occupancy ryot liable to sale for debt and transferable by private agreement. The Government of India (No. 288, dated 19th October 1870) objected on political grounds. Bengal replied in letter No. 943, dated 16th April 1877, which was sent to the Board of Revenue for report. The latter submitted a very full communication, No. 6955, dated 25th October 1877, which is much the best available account of the topic. The Bengal Government again addressed us on the subject in its letter No. 3080, dated 11th December 1878, but no conclusion was come to here, and the question has been allowed to rest. On the present topic, come to the Digest and Rent Papers, Mr. Field's Note is at pages 183-188 of his book. It is discussed by Sir Richard Garth in the Rent Papers II, pages 367-3. For the reasons against introducing one Mr. Harrison, Rent Papers II, pages 401-9. Mr. O'Kinealy, pages 444-8. Mr. Field, Rent Papers II, page 467, and Rent Papers IV, pages 369-71, 374-6. Others to the same result that is noteworthy is Velayat III, as the question had been pretty well exhausted at an earlier stage. The remarks of the Behar Landholders Association, Rent Papers III, pages 425-9; Raja Peearchand's Raj (Rent Papers III, page 497), the other Planters Association (page 527), Mr. Gibbon, (pages 605-6), Lord Ulick Browne (pages 606-7), Mr. Reynolds (pages 609-10), Mr. Barrow (pages 729-4), Mr. MacDonnell (page 730), Mr. Westmacott (page 910), Mr. Dampier (pages 965-8), and the British Indian Association (pages 1004-6), deal with the point. Transferability is also noticed in the same volume at pages 470, 480, 497, 510, 518, 547, 556, 607, 609, 610, 611, 673, 697, 698, 699, 684, 686, 693, 695, 696, 697, 698, 700, 701, 706, 728, 730, 762, 765, 780-6, 788-9, 795-804, 852, 892, 898, 912, 923, 940. The minutes by the Lieutenant-Governor on proposals will be found in No. 5, Reynolds' Memorandum (Rent Papers IV, pages 213-6) and the present letter (Rent Papers IV, pages 21-23). The Lieutenant-Governor writes (page 21) to Rent Papers II, pages 485, 486, and 698. This is the pagination of the first edition printed in the Bengal secretariat Press. In the second edition, printed in the Government of India Press, from copies of which here have supplied to Honorable Members, the pages are 444, 445, and 473. The pagination is unfortunately different throughout. In all my notes I cite the second edition.

§ Digest, page 186. ‖ Primitive Property, page 4.

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(4) private sales; nor can the general question of transferability be discussed without reference to sub-letting. The point which does not appear to have been sufficiently investigated is whether in the local customs of the tract which are reported to exist, the zamindar's assent was or was not a condition of the sale. It is admitted that in some cases the landlords take a fine (*salami*) on transfer; and it seems essential to know how far this custom extends before suppressing it by legislation. If it be determined to make the occupancy right on a broad basis, some considerable concessions must be made to the zamindars; and this is a direction in which the Government would be disposed to look for some opportunity of gratifying the zamindars without depriving the ryots of any rights which they, at present, exercise.

Measures in behalf of the zamindars.

35. Of the measures proposed by the Lieutenant-Governor in favour of the zamindars, the establishment of special rent courts in certain localities is a step within His Honour's executive discretion, and merely calls for approval on the part of the Government of India. The abbreviated Small Cause Court procedure may not be a very valuable addition to the landlord's means of realising his rents; but, for what it is worth, it will probably be accepted. Upon the proposal to allow occupancy holdings to be sold summarily for arrears without decree, I have made some observations in a note on Chapter VIII of the Bill. The expediency of so stringent a proceeding, even in the limited class of cases to which it will apply, will possibly be doubted by the Government. On distraint I propose to remark when commenting on Chapter XIV; I may say here to paragraph 19 of my Memorandum on Behar, and I may, perhaps, add that, in the absence of any trustworthy record of rights, the retention of distraint, in some form, seems inevitable. If all rights in village lands were recorded with accuracy in a Government register kept up to date, I venture to suppose there would be no difficulty in facilitating the collection of rent by processes of a less primitive (I was about to say barbarous) type than distraining the produce.

The Bill does not provide for a record-of-rights.

36. The object of the present Note is merely to present, for the information of the Government, a rough sketch in broad outline of the main features of the case. It will not be expected that after little more than a month's study of the subject an officer of my standing should venture to suggest definite conclusions upon the large questions raised. In particular it is only by a most minute and patient examination, not only of these papers, but also of other available sources of information, that any judgment can be formed upon the equity of, and the necessity for, the proposed invalidation of contracts, and upon the probability or otherwise, if the Bill be passed into law, of undue interference with local or general custom. But I may perhaps here be permitted to mention the criticism which occurred to me on a first perusal of the Bill. It might be described—but, I must add, described by an unfair opponent—as an attempt to effect the sub-settlement of a Province by a stroke of the pen. Assuming that the zamindars may be correctly held to stand in the place of the ruling power, that their so-called rents are analogous to a land-tax rather than to the proceeds of private property, and—a statement involved in these assumptions,—that the Bengal ryot represents the cultivating peasant landholder of temporarily-settled and *ryotwari* tracts, it may be material to observe that there are two general processes by which, in other Provinces, the privileges and obligations of the cultivating class are defined. These processes are the formation of a record-of-rights and the assessment of the dues payable by the landholder. It is possible that the Bill carries the principle of assessment at least as far as it may be wise to proceed. But doubt may well be felt whether the determination of the rights of enormous masses of people by the enunciation of inflexible rules of law is a satisfactory substitute for the slower and more laborious plan of recording,—in view, indeed, of some fixed general principles, but after attention to the variety of individual instances,—the actual status which investigation may, in each case, show to obtain. Possibly the superiority of the latter method might be admitted, but it might nevertheless be set aside on the score of impracticability and expense. If rights have been and are being recorded in *ryotwari* and other parts of the country where peasant holdings are small, a similar proceeding, large though its scale would be, should not be impossible in the Lower Provinces. The cost could be spread over a series of years; and if the task of settling the rights of the Bengal

ryots has to be undertaken on any principle, even at the public expense, it would be far better to encounter any expenditure than deliberately to sanction injustice. If it be allowed that greater precision, and therefore, in particular cases, truer equity, would be attainable by discriminating decisions upon individual claims, it is but just to admit that the subsidiary advantages which a record-of-rights would secure—I mean those appertaining to a correct written definition of the relative rights of zamindar and ryot—are, in principle, recognised by the Bengal Government. As I have noted in the paper on Behar, a substitute for the interchange of leases and counterparts (*pattahs* and *Kabúliyats*) is supplied by the permission to either party to sue for a decree declaring their respective positions.* The Bill makes provision for the registration of transfers and successions in the rent-office of the landlord;† it empowers the latter to measure his estate,‡ and it requires the landlord to give receipts for rent containing full particulars.§ But, except in cases of contest, these arrangements do not imply an independent investigation or an independent record of the facts upon which the interests of landlord and tenant depend; nor is continuity in the record of fresh evidence, as circumstances alter, so secured as to guard completely against its rupture by the neglect of individuals. There is an implied admission that tenants ought to be secured against oppression by the statement in writing of their liabilities and rights; but it seems at least open to discussion whether the means taken to give effect to this principle will, in practice, meet with general and continuous success.

37. These doubts affect the method by which the great object of the Lieutenant-Governor may be attained; they do not call in question the propriety of recognising, as the right of the great mass of the cultivators, fixity of tenure at fair rents. As regards the detailed definition of the class of occupancy ryots, the supersession of contracts, and the rigid limitations on the enhancement of rents, there is, more especially when we look to the care and ability with which this measure has been framed, at least a strong presumption that in the large majority of cases the rules advocated by Sir Ashley Eden would be just. And this brings me to the last point on which I shall venture to remark in this Note. Under the revenue law of several other Provinces,‖ the record-of-rights, after compilation at the time of settlement, is presumed to be true until it has been judicially proved to be erroneous. It has occurred to me that much of the risk, which inevitably attaches to unbending and uniform rules of law when applied amidst a large population, might be avoided if some of the leading substantive provisions of this Bill were recast so as to convert into a statutory presumption what is now a declaration of indefeasible right or an anticipatory decision between conflicting interests. This observation is intended to be taken merely as a tentative suggestion, not as a formal proposal; and if I add some illustrations to explain my meaning, it will be understood that they are restricted to this purpose exclusively, and are not meant to express any final recommendation, or, indeed, even the personal opinion which at present I should be disposed to entertain. Thus, for example, instead of determining universally that all resident ryots have occupancy rights, every such ryot might be presumed to possess such right unless the contrary could be established by evidence. Without altogether invalidating contracts in defeat of tenant-right, it might be presumed that it would be inequitable to give effect to them, leaving the zamindar or tenure-holder to show that a free and fair understanding had been come to in the particular case. Similarly, the Collectors' Table of Rates, which is now conclusive against the superior holder, but not against the ryot,¶ might be conclusive in neither case, and be merely presumed to indicate an equitable rental. So also the fixed limits of rent depending on a share of the crop or percentages of the collections, however just as a general rule, might be regarded as likely to injure, in an appreciable minority of cases, the legitimate expectations of the zamindars; and, if so, it might be better to lay down such restrictions on enhancement merely as a guide to the courts instead of imperatively insisting upon them so as to circumscribe the range of equitable decision. Looking to the character of local and judicial inquiries in India,

Presumptions might be substituted for fixed rules of law.

* Bill III, sections 189, 190, 217. † *Ibid.*, Chapter VII. ‡ *Ibid.*, sections 67, 176-81. § *Ibid.*, section 46.

‖ North-Western Provinces, Act XIX of 1873, section 93; Punjab Act XXIII of 1871, section 107; Oudh Act XVII of 1876, section 17; Ajmere, Regulation II of 1877, sections 67, 68; Central Provinces, Act XVIII of 1881, section 82. ¶ Bill III, section 143.

to the frequent frailty or failure of oral testimony, and to the statements made in these papers as to the very unsatisfactory nature of documentary evidence in rent suits in Bengal, it can hardly be doubted that statutory presumptions would in the country at large produce practically as much general effect, and an effect of the same kind, as rules from which no deviation would be permissible. But the hardship which, in particular cases, might arise from the application of an invariable rule might be prevented by the discreet administration of a law embodying, indeed, the policy of the Government, but still admitting that there might be exceptional conditions under which that policy ought not to be enforced to the detriment of individual interests.

C. L. TUPPER,
On Special Duty.

The 7th November 1881.

SUMMARY OF THE BENGAL RENT BILL AND OF THE MAIN CRITICISMS THEREON.

The following Notes are an attempt to present in a continuous form some account of the provisions proposed in the Rent Bill and of the principal points in the opinions of the local officers consulted on the measure. References are given to the discussions, which will, it is hoped, facilitate the investigation of particular subjects upon which more information may be desired. Endeavour has been made to render the text complete in itself, so that the Notes may be read as a whole without very frequent occasion to turn to other papers. But it need hardly be said that the perusal of the Report of the Rent Commission (Rent Papers I, pages 5-99), of Mr. Reynolds' Memorandum of the 18th May 1881 (Rent Papers IV, pages 245-55), and of the Lieutenant-Governor's present letter and Bill (Rent Papers IV, pages 1-120), is indispensable.

The recommendations of the Famine Commission and some portions of the Rent Acts of other Provinces and of the Central Provinces Tenancy Bill have been cited for purposes of comparison where it has seemed useful to refer to them.

The *Summary* does not include Chapters III and XV of the Bill, which relate to ryots who possess a right of occupancy and to the proceedings for the enhancement of rents. The questions of principle here involved are so important, and have been considered at such length in the reports and correspondence, that it has not been found practicable to deal with them on the method adopted in the present Notes. I have therefore reserved them for a separate paper.

In that Memorandum I shall try, so far as I am able, to review three out of the four prominent topics distinguished in paragraph 21 of my Preliminary Note; *viz.*, the *occupancy right* and its incidents, the grounds and limits of the *enhancement of rent*, and the *procedure* by which enhancements of rent may be effected. The means for improving the *collection of rents* are noticed below. It is submitted that *distraint*, as modified in Chapter XIV, should be retained for the present. It is not the only help offered to landlords in respect to the realisation of their dues; and perhaps it

will not be regarded as a final and altogether satisfactory expedient for that purpose. The *abbreviated procedure* of Chapter XVIII will probably be accepted, but, very likely, without any sanguine expectation of considerable results. The proposals for compelling landlords to bring occupancy holdings to sale and for the summary sale of such holdings on selected estates will, it is anticipated, be received with hesitation.

It should be added that all allusions to the *existing law* are to be understood as referring to the law as expounded in Mr. Field's Digest. The expressions "section," "chapter," and "the Bill," when used without further particularisation, apply to the Bill submitted by the Local Government.

PRELIMINARY.

BILL I—SECTIONS 1-5.

BILL II—SECTIONS 1-3.

[REFERENCES.—*Digest*—Articles 1, 2; *Rent Papers*—I, pages 8-13, 113-9; II, pages 211, 214; III, pages 479, 513-5, 559, 591, 605, 609, 607, 631, 660, 679-80, 694, 714, 780, 797, 775-6, 861-2, 875, 897, 905-8, 921, 961, 980; IV, pages 16, 31, 35, 287-93.]

1. The Bill does not extend to the Jalpaiguri and Darjiling districts, the Hill Tracts of Chittagong, the Santhal Parganas, or the Chota Nagpore and Orissa Divisions. Power is taken to extend it to the Division last named; and the Lieutenant-Governor has made it clear that the Rent Law will not apply to the town of Calcutta.

2. Mr. Nolan, who writes from Shahabad, but has served in Orissa, remarks: "Part I of the Bill should, I think, be extended to Orissa. The present law of that Province is Act X of 1859, which was not framed with special reference to the requirements of that part of the country. There is, therefore, no reason for holding that it should continue in force in Orissa longer than elsewhere. Improvements on the law of 1859 applicable to Bengal are all, I think, as applicable to Orissa. It might, however, be advantageous to introduce some special clauses for Orissa, as has been done for Behar. The custom which there prevails of an annual settlement after a rough measurement should, I think, be defined. Part II of the Bill" (he is speaking of the Bill of the Commission) "would not, I think, work well in Orissa or elsewhere." Mr. Cochran, the Officiating District Judge of Cuttack, does not advocate the extension of the Bill to Orissa, except, perhaps, in the case of some of the northern *parganas* of Balasore. He notes that the zamindars are numerous and petty, and considers that Act X of 1859 has worked fairly well. Mr. A. Smith, the Commissioner of Orissa, does not advise that the Bill should be rendered applicable to that temporarily-settled Province—at all events, till after the next settlement in 1897.

Rent Papers III, page 714.

Rent Papers III, page 861.

Rent Papers III, page 962.

3. Mr. Hewitt, the Commissioner of Chota Nagpore, would extend the proposed law with some modifications to Manbhúm and part of Singhbhúm, where Act X of 1859, as amended by Act VI (B. C.) of 1862 and Act VIII (B. C.) of 1865, has been in force. He would put aside, for the present, the question of amending the

special Rent Law of his Division contained in Act I (B. C.) of 1879, the "Chutia Nagpur Landlord and Tenant Procedure Act." This recommendation is not noticed in the Lieutenant-Governor's letter, and section 1 does not provide for extension to any part of the country, except Orissa.

4. The definitions of "tenure-holder," "under-tenure holder," and "ryot" are noticed in a good many of the papers; (a) but any remarks which it may be necessary to make upon them will be more conveniently deferred. The Lieutenant-Governor has slightly amended the definition of "ryot," so as to cover the holding of grass and fallow lands, (b) and to mark the distinction between ryots and under-ryots. He has added definitions of *khámár*, *sir-jot*, and *sir* lands, (c) and has declared that Behar shall be, for the purposes of the special sections, all the districts of the Patna Division and any parts of the Bhágalpur Division to which those sections may be extended by notification. Several officers (d) pointed out that the relation of landlord and tenant usually precedes the written instrument which declares its existence or specifies its terms; and the definition of "lease" or "pottah" has been amended accordingly. Mr. Hewitt would insert a clause in the definition of "land" to show that mining rights would in no case be included in a demise of lands, except by the express terms of the grant. He believes the definition may suffice; but as there is room for doubt, he would add an explanation that "now here in the Act are mines included in the term "lands." It is clear from illustration (b) in article 1 of the Digest (page 3) that it is the intention to exclude mining leases. For the reason given by Mr. Hewitt, *viz.*, that there is no sufficient information on the subject at present available, it seems most desirable that it should be distinctly understood that nothing in the present proceedings is to affect or regulate mining rights.

5. *Section 4* saves any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, the provisions of the proposed enactment; and the illustration pointedly announces that the custom of subletting is not to be affected. The Commission believes "that there are many local customs in this, as well as in every other country, well understood by the people, recognised by the landlords, and susceptible of proof in Courts of justice." With these the Commission's Bill was

(a) Chittagong Landholders, Rent Papers III, page 679; Purr; Narain Singh, Rent Papers III, pages 816-5; East Bengal Landholders, Rent Papers III, page 859; Mr. Pratt, Rent Papers III, page 681; Mr. Hopkins, Rent Papers III, page 865; Mr. Worsley, Rent Papers III, page 749; Mr. Brett, Rent Papers III, page 761; Firm and several Members of Gaya, Rent Papers III, page 719; Mr. Stevens, Rent Papers III, page 695; Mr. Westmacott, Rent Papers III, pages 908-9; Mr. Anderson, Rent Papers III, page 921; Mr. Dampier, Rent Papers III, page 961.

(b) Mr. Stevens, Rent Papers III, page 873.

(c) See Preliminary Note, para. 23 and footnote.

(d) Mr. Nolan, Rent Papers III, page 714. Mr. Stevens, Rent Papers III, page 873; Mr. Halliday, Rent Papers III, page 897.

Rent Papers III, page 680.

Report, para. 12.

not intended to interfere, unless it expressly rescinded them, or they might be clearly inconsistent with it. Mr. Field observes in his Digest: "There are many agricultural customs in Bengal understood and acknowledged by landlords and tenants, who, however, from the impression that an Act of the Legislature takes the place of every thing, or from some other cause, fail to plead or prove them when they are material." Rája Mohini Mohun Roy, a member of the Commission, disputes the assertion that "the majority of the tenancies in Bengal and Behar depend upon custom rather than contract." In his opinion the area of the operation of local customs must be extremely small.

Digest, page 4, footnote.

Rent Papers I, page 94.

6. It would have been convenient if we had been provided with some general sketch of the character of the customs thus maintained, and if we had been told distinctly with what customs the Bill would interfere and what customs, besides that of sub-letting, would be excluded from its operation. I have not, however, been able to find any general statement of this nature in the proceedings. In default, I have noted some indications of custom relating to land and the tenure of land, which may be brought together in this place. These are, however, often so slight or so imperfectly developed, that they rather stimulate than satisfy curiosity.

Report, paras. 12, 17.

7. The Report describes the *jotdárs* of Bangpur, and alludes to the thirteen *howális* and other interests below the zamíndár in Backergunge. *Ashal talukdárs* and *nim-ashal talukdárs*, resembling the Backergunge *howáladárs* and *nim-howáladárs*, exist in Nookháli. There are *jangalburi ryots*, *mowáddrs*, and *mondals* in Midnapur. These intermediate holders are mentioned in illustration of the difficulty of drawing the line between *talukdár* and ryot. The plan devised by the Commission for basing the distinction upon area has, it will be remembered, been given up. The better opinion seems to be that the existence of occupancy rights in the case of under-ryots has not been generally acknowledged in Bengal, except on the holdings of big *jotdárs* in the eastern districts; but the Bill of the Commission would have allowed ryots holding under occupancy ryots, otherwise than for a term or year by year, to acquire the right of occupancy. Local customs of transferability have been well established in some parts, but are not universal. The reclaiming tenure-holders or *jangalburi talukdárs* require special treatment. Classification

Preliminary Note, paras. 13, 22.

Rent Papers IV. pages 20, 21.

Bill I, sec. 10, explanation 3, clause (c).

Preliminary Note, para. 24.

Rent Papers—I, page 27; II, page 472.

mustéjirs for five years; the *mustéjirs* settle for a like term with *gaekdárs*; and the *gaekdár* cultivates through hired labourers or through *kolaits*, who agree to pay him a portion of the produce. In Maldah and the Sonthal Parganas *chars* or newly-formed alluvial lands seem to be distinguished from others as subject to separate engagements. In Birbhúm the *bhág-jotdár* gets, on the best rice land, one-third of the paddy and all the straw. On poorer land he takes all the straw and half the paddy. The *kishen* or hired labourer takes one-third of the grain and a little straw, the ryot who employs him supplying land, seed, manure, and cattle. In the same district the right of the zamindar to control the making of tanks is fully recognised. In Chittagong there may be customs connected with the making of tidal embankments. In parts of Sáran the ryot may not excavate a tank, but he may dig a well. Customs are evidently prominent in Manbhúm; measurements are not recognised, but the land is let either on shares known as "rekhs" or "kunis," or on "káts," a measure of area nominally according to the seed sown. In many estates there is primogeniture, and lands are assigned to the younger sons for maintenance. *Nayabadi* or reclaiming tenures on customary conditions seem frequent. It is not proposed to deal with the *ghatwali* service tenures; but should the Bill be extended to Manbhúm, the question of the rights of ryots holding under the *ghatwals* might arise. On the Pachete estate in Manbhúm it is the custom to give to all Brahmans, Kayasts, and Vaisyas homestead lands rent-free. In Behar also it may be accepted that there is a good deal of local usage. The Behar Landholders go into detail about produce-rents and appraisement. I have already mentioned the strong belief entertained by some officers as to the existence of occupancy rights by village custom; the *guzashta* holdings of Shahabad are exempt from all enhancement, but there may be others liable to enhancement only in accordance with certain fixed customs. There are *sikmi* plots in Gaya held at fixed rates, which, at the time of the permanent settlement, were the only plots for which rents were paid in money. In the same district the term *zeráit* is not understood in any special sense; it means simply cultivation. Mr. Reynolds describes the *gilandazi* system of South Behar and the Gangetic portions of North Behar, under which the landlord taking a rent in kind constructs and maintains reservoirs, wells, village channels, and embankments. Mr. MacDonnell

Rent Papers III, page 896.

Rent Papers III, pages 898, 902. See also Pathuli Chara Bey, Rent Papers III, page 924.

Rent Papers III, pages 834-5.

Rent Papers III, page 857.

Rent Papers III, page 832; see also para. 12 of Note on Chapter X, *infra*, page 87.

Rent Papers III, page 745.

Rent Papers III, page 881.

Rent Papers III, page 882.

Rent Papers III, page 882.

Rent Papers III, pages 840-1.

Preliminary Note, para. 28.

Mr. Nolan, Rent Papers III, pages 714-8.

Mr. Kinaide, Rent Papers III, pages 710-1.

Rent Papers IV, page 288.

Rent Papers III, page 743.

Rent Papers III, page 744.

Memoir of Birbhum, Rent Papers III, page 847. Mr. Alabaster of Birbhum, Rent Papers III, page 921.

Revised Memoir of Bhaugs, Faridpur District, Rent Papers III, page 948.

Rent Papers III, page 939.

tell us that under the cash rent system landlords are often bound to maintain similar embankments; existing customs, in his opinion, deny to the *shikasi* or *pota ka raiyat* (an under-ryot corresponding apparently to the *korfa* of Bengal) the capacity to acquire a right of occupancy. The *khúdkastdára* of Bengal pay rent in kind, and the tenancy is said to terminate absolutely by custom in one year. The *shaja* ryot, who pays a fixed rent in kind, is distinguished, as he may hold on for another twelvemonth, unless he gets notice to quit. In some places the *bargu* system prevails, under which rent is payable in kind for *khúdkasts* and other lands; and in some eastern districts,—for instance, Jessore and Faridpur,—there is a method of appraisement by *jaukdára*. Mr. Westmacott holds that the terms of a tenure are always easily ascertained, being either settled in writing or by well known custom of the neighbourhood. He would not exclude evidence that by custom the rents of *patni* tenures can be enhanced.

10. The above abstract is not exhaustive, but it will probably suffice to show that, though almost any particular custom may be limited to a specific area, customs do exist in various parts of Eastern and Central Bengal and Behar touching the form of tenure, the conditions of demise, the right of occupancy, the transferability of the holding, rates and modes of payment of rent, classes of soils, classes of land subject to different privileges, classes of tenants with different rights, reclamation and other improvements. It will be recollected that the Sonthal Parganas, Orissa, and the Chota Nagpore Division, including Manbhúm,—all localities where custom might be expected to be comparatively definite,—are, as I have already said, excluded from the operation of the Bill. But, on the strength of the facts noted above, I think it may safely be asserted that in Eastern Bengal and Behar there is a good deal of custom, connected, in the one case, with reclamation, and in the other with produce-rents and appraisement; and there seems to be enough evidence to suggest that more would be forthcoming were the whole subject comprehensively and systematically examined. Judging from the experience gained in compiling the information available in the English language regarding the customs of the Punjab, I should not be at all surprised to find that consistent bodies of usage are in existence even in Bengal, constituting not exceptions in derogation of a common law,

but, in point of *fact*, the real common law of the locality. It may be thought that the Punjab is quite exceptional, and it must be admitted that the greater the cohesion of the tribe or the village, the greater the probability that custom will be preserved. But the Revenue correspondence between the Government of India and all the Local Governments has now been passing through my hands for three years; and I have certainly observed circumstances in Bombay, Madras, the Central Provinces, the North-Western Provinces, and Assam which would excuse the conjecture that the Punjab is not so exceptional—at all events, in regard to customs affecting the enjoyment of land—as might at first sight be supposed. Possibly the explanation is that, under the Punjab system of settlement, the subject must necessarily receive very considerable attention.

CHAPTER I.—OF TENURE-HOLDERS AND UNDER-TENURE HOLDERS. CHAPTER II.—OF RYOTS ENTITLED TO HOLD LAND AT FIXED RATES.

BILL I—SECTIONS 6-18.

BILL III—SECTIONS 6-18.

[REFERENCES.—*Digest*—Articles 19, 20, 21, 23, 24, 25, 30, 34, 35, 37, 38, 39; *Read Papers*—I, pages 9-15, 26-8, 33-4, 86-87, 89, 95, 119-23; II, pages 225-7, 230-1, 254-7, 258, 243-4, 468-9, 471-3, 476-7; III, pages 423-4, 474-6, 479-80, 487, 497-8, 499, 509-10, 518-5, 525, 527, 529, 586-3, 589, 591-2, 596-7, 601-2, 607, 609, 612, 614, 622, 623, 627-8, 631-2, 641-2, 650-1, 663, 670, 681, 692, 694, 699, 707, 714-5, 728, 730, 760-1, 771-81, 802, 809, 871, 875-8, 883, 885-6, 891, 897, 903-9, 919-24, 944-5, 955-9, 1008, 1043-4, 1059-60; IV, pages 16-9, 32-40, 246-51, 263-8.]

1. The four main points in these two chapters are (1) the twenty-years' presumption in the case of tenures* and *ryoti* holdings at fixed rents; (2) the rules for the increase or abatement of the rents of tenures and of *ryoti* holdings at fixed rates in consequence of alluvion or diluvion, or similar cause; (3) the legal incidents of permanent tenures, *patni taluks*, and holdings at fixed rates; and (4) the rules proposed for the enhancement of the rents of tenures held otherwise than at fixed rents.

* The word is employed in this Note to include under-tenures, unless the contrary appears from the text.

Digest, arts. 20, 21, 27, 38

2. Under the present law no dependent *talukdár*, or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the ryot, holding his *taluk* or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the permanent settlement, is liable to any enhancement of such rent. Ryots who hold lands at fixed rates of rent which have not been changed since the same period are entitled to receive *pattahs* at those rates. In both cases, if it is proved that the rent has not been changed for twenty years, it is presumed that the land has been held at that rent, unless the contrary be established, or it be shown that such rent was fixed at some later period.

3. The Bill re-enacts these provisions with some verbal alterations, and adds some explanations taken from the decided cases. It further introduces a new exception, to the effect that the twenty-years' presumption shall not operate to prevent the

enhancement of the rent upon the expiry of a temporary settlement of the revenue, unless the right to hold for ever at a fixed rate of rent has been expressly recognised in settlement proceedings by a revenue authority empowered to make definitively or confirm settlements.

4. The zamindari party is anxious to abolish, or, at all events, to alter and weaken, the presumption; and some protest against the new distinction proposed to be made in favour of temporarily-settled estates, where the advantage of raising the rents will, at least in part, accrue to the Government. It is urged that one-third of the land was waste at the time of the Permanent Settlement, and that thus many tenants, whose holdings really originated subsequently to 1793 and who could not have held land at that date, have got the benefit of the presumption. If Government must change the law in its own interest, how much more should this be done in the interest of the zamindars, many of whom are auction-purchasers, without the means of refuting the presumption by documentary proof from the papers of their predecessors. Influenced by some of these considerations, Mr. Reynolds proposed to allow the presumption to operate only in those cases in which uniform payment could be proved for twenty years before the rule was first introduced into the law in Act X of 1859. His Draft Bill therefore fixed the year 1839 as that from which an unchanged rent must be proved, and further provided that the presumption should not ordinarily operate in the case of estates purchased at auction sale for arrears of revenue or under a decree.

As the Lieutenant-Governor observes, the officers consulted upon Mr. Reynolds' Draft were all but unanimous in condemning the change in the law which he proposed. It was represented that the ryots and tenure-holders would not have hitherto considered it necessary to preserve receipts for more than twenty years; that it is difficult for ryots, considering the nature of their houses and their modes of life, to keep papers for so long a period as forty years; that, with the increasing lapse of time, the production of contemporary oral evidence would cease to be practicable; that no one need become an auction-purchaser against his will; and that estates would be designedly brought to sale for the express purpose of delivering them from the presumption. Purchasers, it was said, had regulated their bids with the knowledge of the presumption; the rule was

Babu Peary Mohun Mookerjee, Rent Papers I, pages 267.

Chittagong Landholders, Rent Papers III, page 681.

Babu Joykissen Mookerjee, Rent Papers III, page 698.

Behar Planters, Rent Papers III, page 857.

Bhut Bhugo Landholders, Rent Papers III, page 863.

Mr. Hopkins, Rent Papers III, page 896.

Babu Parbati Charn Roy, Rent Papers III, pages 922.

See also Mr. A. Smith as to maintenance of the present law, Rent Papers III, page 870.

Bill II, secs. 6 and 10.

Mr. Wesley, Rent Papers III, page 849.
Lieutenant-Governor, Rent Papers IV, page 12.
Mr. Halliday, Rent Papers III, page 867.
Mr. Anderson, Rent Papers III, pages 919-20.
Mr. Lawrence, Rent Papers III, page 944.
Ryots of Burdwan, &c., Rent Papers III, page 1042.
Indian Association, Rent Papers III, page 1089.

Mr. Dampier, Rent Papers III, page 954.

Mr. Nolan, Rent Papers III, page 871. See also Mr. Buswell, Rent Papers III, pages 885-6, as to the onerous evil.
Mr. Finucane, Rent Papers III, pages 937-8.

unnecessary before 1859, because Act X created the means of enhancement, and provided a security against its abuse. Practically to confiscate the tenures at fixed rates would be an injustice, a scandal, and an economic evil. The proper remedy for the grievance of the auction-purchaser is to compel the former proprietor to supply him with the necessary papers and accounts;—to make the tenant suffer for the former proprietor's default is to rob Peter to pay Paul.

Mr. Stevens, Rent Papers III, page 875.
Mr. Bosmes, Rent Papers III, page 891.
Mr. Westmacott, Rent Papers III, pages 936-9 (who, however, approves the alteration of the period to 1859).
Musnif of Ketalpar and others, Rent Papers III, page 921.

5. Mr. Reynolds' proposal has therefore been dropped, and the Lieutenant-Governor has reverted to the recommendations of the Commission. There is, however, much force in Mr. Boxwell's remark, that the object is not to handicap the parties so that they may start fair in a legal contest, but to ascertain a fact with such an approach to certainty as the circumstances of the case admit. In Mr. Dampier's opinion the presumption of the present law is unsound, because in the majority of instances it creates new rights, instead of merely establishing those which actually exist, but for the support of which full proof is not attainable. Parties are also forced into litigation because it is dangerous to allow tenure-holders to sit at the same rents for twenty years. On the whole, the Lieutenant-Governor's proposal to register all existing privileged tenures within (say) two years of the passing of the Act, and then to rescind the presumption, seems perfectly just to all parties. Very probably, if any regular record-of-rights were framed, this would be done; but the presumption is applied to tenures and holdings in the permanently-settled districts of the North-Western Provinces, where the record-of-rights is now being revised.

Rent Papers III, page 895.

Rent Papers III, pages 933-4.

Rent Papers IV, page 17.

Act XII of 1881, secs. 4, 5, 6.

6. To the charge of inconsistency in avoiding the presumption where it tells against the interest of the Government, Mr. Reynolds replies that in an estate not permanently settled the Government share may vary, and does usually vary at each resettlement; and seeing that rent in Bengal is the share of the produce originally belonging to the Government, he perceives no inequity in assuming variability, unless uniformity is proved. It may be admitted that this argument is sound enough when employed in reference to estates which have *never* been permanently settled. Perhaps there is little rashness in the supposition that the idea of fixed rents originated in and is a consequence of the Permanent Settlement. At all events, the analogous

* Rent Papers IV, page 246.

sections in the North-Western Provinces Rent Act, above referred to, do not apply to temporarily-settled districts. But at the same time Mr. Worsley's observation that, looking to section 26 of the Bill, a permanently-settled estate, when bought by Government, will practically lose that character and become subject to temporary settlement, seems to deserve attention. I am not sure what is meant; but it should perhaps be made clear that tenants and ryots in such estates should not lose the advantage of the presumption. The mere change of ownership should not lessen their rights, and there may be room for doubt whether sections 6, 16, 34, and 36 of the Bill, when read together, would secure this.

Rent Papers III, page 730.

7. The alluvion and diluvion rules in sections 8 and 18 have been very fully explained by the Lieutenant-Governor and Mr. Reynolds. It will be noticed that contracts are saved in regard to tenures, but not in respect to the holdings of the ryots at fixed rates. I suppose it is assumed that the ryots' holding would not have originated in any contract grant. Bearing in mind the theory of rent which runs through these discussions, the analogy of the similar treatment of the land revenue demand will probably be admitted; and the reasoning in paragraph 51 of the Report, to the effect that the ryot should not be called upon to pay rent for land no longer in existence, and, if this be allowed, should in fairness be compelled to pay for accretions, seems open to no exception. The principle being accepted, there can scarcely be any doubt, in the light of the opinions, that the area is not the proper basis for regulating the increment or decrement of rent. This was the proposal of the Commission, but it obviously overlooks the diversity in the productiveness of soils. The rent should be adjusted to the rent-paying capability or assets, and area taken as the sole criterion only in cases of abatement where there is no other guide. The Bill has been framed on these considerations, and the view of the Lieutenant-Governor will most likely be recognised as a just one.

Rent Papers III, pages 17-18, 247-8.

See Deputy Collector of Bankura, Rent Papers III, page 651, as to cases of *patni* and *darpatni* tenures not being cognizable on account of alluvion.

8. Section 17 of the Bill, declaring holdings at fixed rates to be saleable as tenures, transferable, heritable and devisable, and exempting the ryots of such holdings from ejectment, has been added by Mr. Reynolds. Section 12, determining that all permanent tenures are heritable, devisable and transferable, appears to Mr. Westmacott to be needless. In his opinion the Court should be at liberty to decide on the

Rent Papers III—
Mr. Barlow, page 500.
Surji Narain Singh, page 515.
Rent Bengal Landholders, pages 540-1.
Purbati Churn Roy, page 628.
Mr. Ware, pages 691-2.
Mr. Worsley, pages 730, 869.
Messrs. J. F. Stevens, Cowley, Mares, page 760.
Mr. Cockrain, page 862.
Mr. C. C. Stevens, page 875.
Mr. Beames, page 891.
Mr. Westmacott, page 909.
Mr. Anderson, page 920.
Mr. Dampier, pages 952-9.
See Regulation II of 1819, sec. 2.
Regulation XI of 1825, sec. 4.
Act IX of 1847, sec. 3.

Rent Papers III, page 909.

nature and incidents of every tenure according to evidence. "Most permanent tenures," he continues, "are heritable, devisable and transferable, as herein declared; but some are not so by the custom of the country, and some are not so by special contract." He therefore thinks it undesirable that the law should interfere. According to article 18 of the Digest, a tenure may be permanent without being transferable. The Lieutenant-Governor remarks that no change is proposed in this section. Section 12 reproduces the present law as to the incidents of *patni taluks*, but expressly declares that such tenures are devisable. Mr. Westmacott has been told that the rents of some *patni taluks* are not fixed in perpetuity; and the East Bengal Landholders object to the presumption that where the term *patni* is used, the tenure shall have the incidents described in the section. They instance Government estates purchased by private individuals where tenures, sometimes called *patni* tenures, have been dealt with as subject to enhancement. It may be replied, to the first objection, that the section substantially establishes a presumption which is open to rebuttal; and to the second, that this presumption is supported by the judicial decisions. The Maharaja of Burdwan and the British Indian Association are opposed to the incorporation of the *patni* law in the present measure. The Lieutenant-Governor's statement that opinions are, on the whole, in favour of this course seems a legitimate inference from the general absence of objection.

Rent Papers IV, page 19.

Digest, art. 26.

Rent Papers III, page 909.

Rent Papers II, page 662.

Rent Papers III, pages 826, 980.

Rent Papers IV, page 19. See Note on Chapter XVI, para. 3, *infra* page 122.

9. The Lieutenant-Governor observes that no change is proposed in the law of enhancement applicable to tenures held since the Permanent Settlement. Section 7, it is true, merely adds explanations, at least one of which is taken from the case-law. But whereas the law now applies to *dependent talukhdárs*, the section extends it to the holders of all tenures and under-tenures. The Commission considers that the number of tenures and under-tenures held since the Permanent Settlement, but not now within the law as to fixed rents, is probably very small. The East Bengal Landholders represent that the number of under-tenures, *i.e.*, tenures not held immediately below the zamindar, to which the protection of this section is extended, is not small, and that the under-tenure holders will be benefited at the expense of the landlords. There is no information as to the actual number of these under-tenures. But as the section saves both special custom and the

Rent Papers IV, page 17.

Report, para. 26.

Rent Papers III, page 869.

conditions of the demise, there does not seem to be any strong case against it.

10. Coming now to the enhancement of tenures not held since the permanent settlement, and outside the law as to fixed rents, the first question that arises is whether any rules on the subject are required at all. The statute-law is at present silent on the point; the case-law seems to be that, subject to custom, the rent may be enhanced up to the limit of the prevailing rate payable by the holders of similar tenures in the neighbourhood; or, where no such prevailing rate is easily ascertainable, up to such a limit as shall not exceed 10 per cent. of the collections after deducting the expenses of collection. "The want of a definite enactment * * has," the Commission states, "undoubtedly given rise to much expensive litigation"; and this was the main point urged by Mr. Dampier when the question was debated at the thirteenth meeting of the Commission.

Report, para. 85. Digest, art. 93.

Rent Papers II, pages 226-7.

11. Sections 9 and 10 of the Bill seem, at first sight, strange to an up-country officer. By the procedure to which we are accustomed the assets of an estate are first ascertained, and then a certain proportion, usually one-half, is assigned to the Government or the *jágírdar*, the rest being left to the subordinate holder. The plan in the Bill reaches the same end by a converse method. The assumption is, not that the superior owner has a right to a definite share and the subordinate to the residue, but, on the contrary, that the fixed share is that of the subordinate, and that the superior takes the rest. Of course, when the share of either is fixed, the result is the same, always supposing the residue to be a constant quantity. The theory seems to be that the intermediary has the advantage of an allowance for his trouble in collecting a Government due, whether payable to the Government or not, and must also be reimbursed the expenses of reclamation. Sections 9, 10 and 11, taken together, lay down that the rent of tenures may be enhanced up to the customary rate payable by persons holding similar tenures in the vicinity; or, in the absence of such customary rate, to whatever rate the Court shall determine to be fair and equitable: provided (1) that the profit of the ordinary tenure-holder shall *not exceed* 30 per cent. of the difference between the gross assets and the collection charges; (2) in the case of a reclaiming tenure, that such profit shall not be *less* than 20 per cent. of the same amount; (3) that the rent may not be more than doubled; (4) that the increment may be gradual for five years if there is prospect of hardship; and (5)

Cf. Bengal Settlement Manual, 1879, sec. IX, rules 1 and 4.

that when the rent has once been enhanced, it shall not be liable to alteration for a period of ten years, except in consequence of alluvion or diluvion.

Rent Papers IX, page 18.

12. With regard to the third, fourth, and fifth provisos above mentioned, the Lieutenant-Governor states that the limitations are generally approved by Government officers, and are strongly opposed only by the extreme section of the zamindari party. I must postpone the discussion of the general principle of imposing such restrictions upon enhancements of rent till I can take it up in a subsequent paper, in connection with the recommendations of the Famine Commission. But I may here briefly refer to some of the objections which have been brought against these sections in the present papers.

Rent Papers III, page 110.

13. Mr. Barlow, Commissioner of Bhágalpur, thinks that the rule against more than doubling the rent is likely to lead to injustice. Mr. Wace of Birbhúm would lay down no such limit as is proposed in section 11, but would leave the degree of enhancement to the Courts. Mr. Finucane has not in practice met with any instances which would lead him to think that there is any occasion to devise special rules for the enhancement of the rates of tenures or under-tenures. Mr. Westmacott takes the same view. Not only are the terms of tenures settled in writing or by custom, but he thinks the Courts, to save themselves trouble, would gladly grasp at such limitations as 20 or 30 per cent., and would not do justice, as they would if they ascertained from evidence the terms of a tenure and the respective rights of the parties. The Behar Landholders contend that the limitations in sections 9, 10, and 11 will render enhancement valueless. The Chittagong Landholders object, as also does Babu Joykissen Mookerjee. The latter urges, perhaps not without some reason, that reclamation may will be left to contract. Mr. Cornish of Hooghly, though not immediately referring to the sections here in question, distinguishes the relation of ryot and zamindar from those of zamindar and tenure-holder, and ryot and under-ryot. He would never let contract interfere between the ryot and the zamindar as to the acquisition of occupancy ryots, but contract should govern the relation of ryot and *korfa*, of tenure-holder and zamindar. The East Bengal Landholders urge, amongst other things, that the limit of double the rent will injure the indulgent landlord who has refrained from raising the rents. The Collector of Dacca opposes the 30 per cent. rule, the ten-years' rule and the rule for gradual enhancement as drawn by the Commission. The Collector

Rent Papers III, page 631.

Rent Papers III, page 629.

Rent Papers III, page 909.

Rent Papers III, page 423.

Rent Papers III, page 485.
Rent Papers III, page 499; see also remarks of Manbhúm Committee, Rent Papers III, page 681.
Rent Papers III, page 407.

Rent Papers III, page 562.

Rent Papers III, page 607.

Rent Papers III, page 612.

of Backergunge repeats the argument above ascribed to the Landholders of Eastern Bengal. Mr. A. Smith, Commissioner of Orissa, sees no reasonable ground for limiting the enhanced rent to double the previous rent. Several of the subordinate judicial officers are amongst the dissentients. Mr. Veasey of Backergunge* deprecates the hard-and-fast rule of section 11 (a) as likely in many instances to press unduly on the zamindars. Mr. Anderson† of Bankura deems that the limit of double the rent is, politically speaking, unnecessary in Bengal, and that, if so, it can be justified on no other ground. A number of other opinions, of which a good many are favourable, are noted in the margin. The general result seems to be that the most doubtful point is the limit, just mentioned, of double the rent. If the percentages of sections 9 and 10 are retained in the Bill, their exact amounts will, of course, be again carefully considered in Select Committee.‡ Mr. Reynolds points out that the British Indian Association passes over these sections in silence.

14. Section 11 of the Bill of the Commission, which has been omitted, proposed to take the area of the holding as the criterion for distinguishing between the tenure-holder and the ryot, with the object of benefiting the actual cultivators. The Lieutenant-Governor remarks that it would have effected a legislative revolution over large tracts of country; and Mr. Reynolds says that the intended 100-bigah rule was an arbitrary one, cutting the knot without untying it, overriding custom and contract, placing a number of persons in a position which they never desired or intended to fill, and trenching upon the rights of the zamindars by creating tenures without their consent. Perhaps the opinions on the section are not now of much practical moment; but I have collected them in the course of my work. They appear to me fully to bear out the above observations.

Rent Papers III, page 670.

Rent Papers III—Subordinate Judge, Dumkeat page 734; Munsif of Palma, page 779; Munsif of Sooksagar, Palma District, page 780; Munsif of Bongpur, page 760.

* Rent Papers III, page 686.

† Rent Papers III, page 721.

Rent Papers III—Surji Narain Singh, page 812; Mr. Pratt, pages 891-2; Mr. Oldham, page 901; Babu Purbati Churn Roy, page 922; Mr. Ravenshaw, page 927; Mr. Browne, pages 941-2; Mr. Anderson, page 951; Mr. Hewitt, page 951; Mr. Nolan, page 715; Mr. Mayo, page 760; subordinate judicial officers, pages 773-4, 778-81; Mr. Stevens, page 823; Mr. Beames, page 901; Mr. Lariviere, page 944; Mr. Dampier, pages 949-51.

Rent Papers III, page 1008.

‡ For the reasons for the present figures, see Mr. Dampier's Note, Rent Papers III, pages 871-2.

Rent Papers IV, page 19.

Rent Papers IV, page 250.

§ Rent Papers III—Babu Landholders, pages 623-4; Mr. Lewis, pages 674-6; Chittagong Landholders, pages 676-80, 681; Raja Promothenath Roy, page 697; Mr. Cowell, page 697 (approves); Babu Joglomoni Mookerjea, page 699; Mr. Barlow, page 810; Surji Narain Singh, pages 812-4; Backergunge Landholders, page 827; East Bengal Landholders, pages 862-3; Mr. D'Oyly, page 880; Mr. Pratt, page 891; Mr. Hopkins, page 896; Mr. Pratt, page 902; Mr. Oldham, pages 900-1 (approves); the Collector of Dacca, page 907; the Collector of Backergunge, page 909; the Collector of Backergunge, page 912; the Collector of Mymensingh, page 914; Babu Purbati Churn Roy, page 922; Mr. Ravenshaw, page 926 (approves); Mr. Wace, page 932 (approves); Mr. C. C. Stevens, page 941 (approves); Mr. Anderson, pages 950-1, 959; Mr. Price, page 963; Mr. Hewitt, page 966; Mr. Mayo, page 976; Lord Ulick Browne, page 1004; district officers of the Rajshahi Division, page 1009 (amongst whom Mr. Pontet of Pubna approves); Mr. Metcalfe, page 707; Mr. Nolan, page 714 (approves, if a chance be afforded saving existing customs and privileges); Sirdarnd Landholders, page 798; Mr. Worsley, page 730; Mr. J. P. Stevens and Mr. Cowley, page 740; Monsif Ibrahim and Bodi, page 761; various subordinate judicial officers, pages 771-83; Mr. Cockerell, page 802; Mr. Browne, page 939; Mr. Anderson, page 951; Mr. Lariviere, page 946; Mr. Dampier, page 951.

CHAPTER IV.—OF RYOTS WHO DO NOT POSSESS A RIGHT OF OCCUPANCY.

BILL I—SECTIONS 82-5.
BILL III—SECTIONS 26-30.

[REFERENCES.—*Digest*—Articles 49-53; *Rent Papers*—I, pages 49-50, 121-3; II, pages 229, 234-5, 237, 238, 242, 472-3; III, pages 454, 486, 495, 503, 511, 520, 572-3, 583, 724, 856, 865, 700, 719, 863, 877, 893, 898, 912, 939, 947, 966, 993-8, 1006-7; IV, pages 23-4, 46-7, 259, 302-4.]

Act VIII (B. C.) of 1869, secs. 8-9, 14; Act X of 1859, secs. 8, 13 and 76, last section.

1. According to the statute-law, ryots not having rights of occupancy are entitled to *pattahs* only at such rates as may be agreed on between them and the persons to whom rent is payable; and the term of any such *pattah* is exclusively in the discretion of the person entitled to the rent. But the ryot is not liable to pay any higher rent than the rent payable in the previous year, unless he has been served through the Collector with a written notice specifying the enhanced rent and the ground upon which it is claimed. It seems to have been further settled by the Courts (1) that if the ryot elects to remain in possession of the land after notice, he cannot be compelled to pay more than a reasonable rent therefor; (2) that the ryot cannot maintain a suit to have his future rent fixed, nor for a *pattah*, at a rate to which the landlord has not agreed, nor for abatement; conversely, (3) that, in the absence of agreement as to rent, the landlord cannot sue the ryot for a *kabuliyat*; and (4) lastly, that the ryot cannot, against the will of his landlord, retain possession of land in which he has not a right of occupancy; but if he has entered into possession otherwise than for a specific term, or having entered for a term has held over with the consent of his landlord, express or implied, he cannot be ejected without service of a reasonable notice to quit.

2. The law as to the interchange of *pattahs* and *kabuliyats* being rescinded by the Bill, the language of the present chapter of course follows this alteration. The principles that the unprivileged ryot may not sue his landlord for a determination of the rent or retain possession of the land against the will of the landlord are maintained, as also is the requirement of a reasonable notice to quit, the time of the notice being adjusted to the agricultural year. But it is laid down that

no unprivileged ryot may be ejected otherwise than by aid of the Civil Court, through which the notice must be served; and even then its service only gives the landlord the right to sue within three months of the expiry of the year in which the notice was served, and entitles him, if he ultimately obtains a decree for ejectment, to recover "the full letting value of the land for such time as he may be kept out of possession after the expiry of" the year, together with reasonable damages. The rent may be enhanced (1) by written agreement, and (2) by notice, as at present. On receipt of notice, the ryot may relinquish the land before the first day of the next year. But if he does not do so, he will be liable, subject to certain limitations, for the enhanced rent. The limitations may be regarded as in part the substitute for the existing rule as to a reasonable rent, and are (1) that the rent may not be more than doubled, and (2) that the money rent of the unprivileged ryot or under-ryot shall not exceed 35 per cent. of the gross produce.

3. From the above comparison of the provisions of the Bill with the law now in force, it will be perceived that the three important innovations are—*first*, that there shall be no eviction, save through the Civil Court; *secondly*, that the notice to quit merely gives the landlord a right to sue; and *thirdly*, that the amount of the rent is strictly limited.

4. It would have been satisfactory if this chapter had been more fully discussed; but, as Mr. Reynolds remarks, it has received comparatively little notice. Taking the first and second changes together, I shall mention below the rules in force in other Provinces as to the effect of a notice to quit. Mr. Barlow, Commissioner of Bhágalpur, would so frame the law, that the notice to quit, served through the Court, should be held equivalent to an order of ejectment, leaving the ryot to sue against the same, if he chooses. There is, in Mr. Barlow's opinion, no reason why the landlord should have to sue refractory tenants. Mr. Pratt of Purneah agrees. Mr. Beames, Officiating Commissioner of the Burdwan Division, considers that the Rent Commission has shown too great a tendency to compel all parties to take their disputes into Court. The notice to quit should be served through the Collector, as the matter requires no judicial deliberation. He would even go as far as Babu Joykissen Mookerjee, and allow a landlord to evict without the assistance of the Court.

Note on Chapter X, para. 18.

Rent Papers III, page 811.

Rent Papers III, page 893.

Rent Papers III, pages 805-3.

Rent Papers III, page 802.
Rent Papers IV, page 209.

"I do not want," he says, "to encourage ejectment; but where ejectment is allowed, I would make the process as easy as possible. Where a right is conceded by law to any person, he should not be hampered in the use of that right." "Considering," writes Mr. Westmacott, "the delay of procedure in the Civil Courts, and the amount of money the litigants have to waste on the *sastis, sasthâdés*, pleaders, and birds of prey that infest the Courts, I think it is hard that a landlord should not be able to evict a defaulter without going to the Civil Court." Referring to the provision that the landlord may recover the full letting value of the land if the ryot unjustifiably holds on after notice, Mr. Westmacott goes on to urge that it looks very plausible on paper to say that a landlord is to be entitled to recover this and that from the ryot; but such a decree is nothing but waste paper. The landlord could not enforce it. The ryot who gives trouble is not the substantial peasant, but the man of straw. The whole passage (paragraphs 95-104) is well worth reading. The zamindars, as represented by the British Indian Association, fear that the provisions of the Bill will encourage the ryot to hold over, in spite of the wish of the landlord to the contrary. To check or prevent wilful recusancy, they would impose "exemplary penal damages" upon the tenant for his refusal to quit after notice. "It ought to be," they think, "at the discretion of the landlord to fix the rent," and the tenant, if he does not accept it, can relinquish the land. The East Bengal Landholders also imply that the general effect of the chapter will be to enable a refractory tenant to remain on the land, though it be the object of the landlord to eject him.

Rent Papers III, pages 912-2.

Rent Papers III, pages 895-6; see also Mr. Reynolds' reply, Rent Papers III, pages 1006-7.

Rent Papers III, page 873.

Bill III, secs. 11 (c), 24 (5).

Bill III, sec. 11 (c), 143.

Rent Papers III, page 1006.

Rent Papers IV, page 320.

Rent Papers III—Behar Landholders, page 434; Chittagong Landholders, page 480; Burdwan Raj, page 520; East Bengal Landholders, pages 872-3; Mr. Pratt of Purnea, page 893.

5. The limitations on the rent are connected with the general policy of the Bill. If it is thought inadvisable to declare in the case of tenure-holders and occupancy ryots that the rent shall not be more than doubled on enhancement, *a fortiori* this protection will be denied to the less privileged residuum of cultivators. Even as it is, there being no ten-years' rule here, the value of the protection might not be great; for, as Mr. Reynolds points out, the rent might be doubled, at the landlord's pleasure, every year. Mr. Reynolds has also referred to the objections raised when the rule appeared in the Bill of the Commission. They were, however, all of a general character, and do not call for particular remark. In the subsequent opinions upon Mr. Reynolds' Draft (the

opinions which have not been summarised in the papers), the main point discussed was the new rule, then introduced for the first time, that the occupancy ryot shall not be entitled to demand or recover from his under-ryot a rent exceeding 50 per cent. of the money value of the gross produce, nor a rent exceeding by more than four annas in the rupee the rent which such ryot is himself liable to pay to his superior landlord. The provision in the Lieutenant-Governor's Bill—as yet uncriticised—is very different. It applies to all unprivileged ryots, whether they hold of other ryots or not. The percentage is 35, not 50; the four-annas' rate has been struck out; and it is distinctly intended that no legal maximum shall be fixed for the produce-rents of *korfas*, or under-ryots, who, by custom, usually pay half the crop.

Rent Papers IV, page 304; Bill II, sec. 20.

Rent Papers IV, page 23-4.

6. In principle, however, at least one of the observations made on Mr. Reynolds' Draft is still applicable to the present section. There is the obvious probability that the object of any such rigid money limit will be defeated in every case in which it may suit the parties that it shall be so. The idea is that you cannot prevent sub-letting, but may discourage it by this and other expedients. Is it really practicable to allow sub-letting, and yet to enforce this restriction upon money rents? I merely note the point here for further consideration in connection with the general subject of sub-letting,* which must be dealt with when remarking on the occupancy right. On the other hand, Mr. Halliday's argument, that if it is thought right to limit the rent demandable by an occupancy ryot, then the rent payable by an unprivileged ryot to his landlord should also be limited, has been accepted in the Bill. Mr. Westmacott's comments also have had effect. "It is very common," he observes, "for a ryot to hold on an *adhiyari* or *metayer* agreement, under which he pays half the gross produce; but the terms vary according to the contributions of the over-ryot as to seed or the use of cattle and implements. Why should the law interfere with free contract in such matters? It is impossible to distinguish between what such a ryot pays as rent and what he pays as interest on capital."

Rent Papers III.—Mr. Stevens, page 827; Mr. Finucane, page 939; Mr. Dampier, page 966.

Rent Papers III, page 896.

Rent Papers III, page 913.

* It may be convenient, however, to cite at once some references on the important matter above briefly alluded to:—Digest, pages 29 note, 99 note, 182-4; *Rent Papers*—II, pages 222, 231-4, 242, 262, 286, 287, 401-10, 444-6, note 3, 462 note, 467, 469-70, 471-3, 474-6; III, pages 480, 623, 806, 905-6, 922, 1005-7, 1008; IV, pages 21, 304, 306. I invite special attention to the remarks of Mr. Reynolds (Rent Papers III, page 806), Mr. Westmacott (Rent Papers III, page 905-6), Mr. Dampier (Rent Papers II, pages 472-3, and Mr. Reynolds (Rent Papers IV, page 306). I have already quoted some of the above passages in the footnote on page 31, *supra*.

Supra, pages 23-2.

7. Some further traces of such arrangements will have been observed in my Note on Section 8. It is, I believe, a common experience that when we press down to the concrete facts of tillage amongst the poorer cultivators, the line between wages paid in kind for agricultural labour, the proceeds of a partnership in cultivation, and rent delivered for the use of land becomes, in practice, difficult to draw. I could produce evidence of *metayer* agreements more or less resembling those described by Mr. Westmacott, at least from parts of the country as far apart as the Punjab, the Central Provinces, and Madras. With such a system, in the case of unprivileged ryots, the Lieutenant-Governor, if may be supposed, does not intend to interfere. But how far does it extend? If it should be the general rule that the *quasi* sub-lease is really of this character, the proposed money limit would have little effect.

Punjab—Customary Law, Vol. III, Part II, sec. IV; Answers to Famine Commission, Vol. II, pages 711-23; *Central Provinces*—Answers to Famine Commissrs, page 158; *Madras*—Answers to Famine Commission, page 220.

CHAPTER V.—OF THE USE OF LAND FOR BUILDING PURPOSES.

Bill I—Sections 36-42.
Bill III—Sections 31-33.

[References.—*Digest*—Articles 1, 12, 63, 90, 91; *Rent Papers*—I, pages 50-2, 93, 133-5; II, pages 215, 216, 218, 227, 375-81; III, pages 453, 456, 458, 477, 480, 491, 495, 503, 512, 530, 535, 573, 574, 593, 595, 602, 604, 610, 615, 657, 663, 669, 673, 701, 719, 745, 763, 819-23, 862, 877, 883, 888, 913, 925, 930, 968, 996, 1097, 1060; IV, pages 24, 48, 49, 259-61, 264-5.]

1. This chapter is generally novel, and would cover other cases besides those which its title imports. It forbids ryots to use land for building or other purposes inconsistent with agriculture and the like, but reserves permission to them to erect suitable dwelling-houses. After twelve years' immediate possession, it confers an heritable, transferable, and devisable right of occupancy in land used for other than agricultural purposes, not merely upon ryots, but upon all tenants who have not contracted otherwise. It provides a rule for the enhancement of the rents of occupancy tenants thus created.

2. The Rent Commission proposed some other sections, of which the objects were (1) to enable a landlord to interpose where the ryot changes the use of the land; (2) to secure the latter compensation for his expenditure should the landlord raise no objection within a reasonable time; and (3) to guarantee the ryot the full enjoyment of the alteration made should the landlord fail to object within two years. Bill I, secs. 37-40.

3. As is mentioned in Mr. Reynolds' Memorandum, page 17, the general current of opinion was unfavourable to the retention of this chapter as it stood in the Draft of the Rent Commission. In particular, it was pointed out that sections 37 to 40 of the Draft seemed to lose sight of the fact that the ryot is a wrong-doer if he applies the land to any purpose inconsistent with that for which it was let to him. The sections might be supported on the general ground of the public interest in facilitating improvements, but they have been omitted as "capable of misuse," and possibly leading to "fraudulent and collusive transactions between a ryot and the agent of the zamindar." Rent Papers IV, page 262. Rent Papers III, page 702. Rent Papers IV, page 261.

4. The existing case-law is elaborately examined in Mr. Field's Note of 24th December 1879. According to the Digest, article 62, "every tenant is bound to use Rent Papers II, pages 375-81.

the land which he holds as tenant in a reasonable manner for the purpose for which it was let or has been customarily used. A ryot may not, without the consent of his landlord, erect a permanent building, dig a tank, or execute any other work which materially alters the condition of the land held by him, and renders it permanently unfit for agricultural or horticultural purposes." This rule is abstracted from the decisions of the Courts, and it seems reasonable to draft upon the first part of it* the proviso proposed in section 31† of the Lieutenant-Governor's Bill empowering the ryot to build a suitable dwelling for himself, though not necessarily a brick one, as the Rent Commission had suggested. The penalty added in the last sentence of this section by the Lieutenant-Governor seems needed in consequence of the omission of sections 37-40 of the Commission's Draft, and not otherwise open to exception.

Rent Papers III. page 1060.

The Indian Association, however, arguing in favour of the ryots, would restore the expression about a brick-built house, which has been omitted as unnecessary, because "it is believed that a ryot hardly ever builds a *pucka* house without first securing a permanent lease of the land." The ryots who would build *pucka* houses would probably be of a substantial class, and capable of looking after their own interests. On the other hand, Mr. Halliday, the Commissioner of Patna, and Mr. Macdonnell, the Collector of Sárun, would leave the matter of section 31 to be provided for by prescription and custom rather than by specific rules of law. In Mr. Halliday's opinion the declaration that a ryot has a right to build a separate dwelling-house on his holding away from the village or hamlet site might stir up strife in the village community.

Rent Papers III, page 939.
Rent Papers III, page 948.
See also opinion of several subordinate judicial officers of Gaya, Rent Papers III, page 933.

5. The Commission has dealt with the subject in paragraphs 108 to 113 of its Report, and appears to have been divided in opinion as to the necessity for legislation. The passage in the Report expounds the proposed law, but gives few reasons for enacting it. The chief seems to be that it is desirable to encourage the trading classes and to raise the standard of comfort by promoting the erection and use of comfortable dwellings. In particular, I do not find any express statement in these paragraphs of the grounds upon which it is recommended that occupancy rights shall be conferred on tenants, as in section 32 of the Lieutenant-Governor's

Rent Papers I, pages 50-2.

* The second sentence quoted from the Digest is practically cancelled by section 68 of the Bill.

† Quoted in extenso on page 52.

Bill. Mr. Reynolds retains these sections for the protection of non-agricultural villagers, which he states has been already given by one of the Regulations and the Sale Laws. Apparently, it is merely the case that leases of land for building purposes have, in several instances, been favoured by the Legislature. Mr. Field observes: "When proprietors were at the time of the permanent settlement prohibited from granting leases for a longer period than ten years, a special exception was made in favour of leases of ground 'for the erection of dwelling-houses or buildings for carrying on manufactures, or for gardens or other purposes, or for offices for such houses or buildings.' Protection against purchasers at a sale for arrears of revenue has also been afforded in the Sale Laws to '*bond fide* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying-grounds, clearing of jungle, or the like beneficial purposes.'" That is to say, such leases are not avoidable at the option of the purchaser in consequence of the sale.

Rent Papers IV, page 201.

Rent Papers II, page 303.

Regulation XLIV of 1793, sec. 8.

Act XII of 1841, secs. 37 & 38.
Act I of 1845, sec. 26-7.
Act XI of 1859, secs. 37, 52.

6. The strongest reasons which I have been able to trace for legislation are that exception might be taken, on the ground of hardship, to the rulings of the High Court cited by Mr. Field, which would practically enable landlords to dispossess tenants not having a right of occupancy who had built small *kutcha* dwellings; and the statements of Mr. Oldham, Deputy Commissioner of the Sonthal Parganas, that some law is badly wanted, that the case-law is chaotic, and that the last rule allows ejectment, subject to compensation, when the tenant has no lease. But I apprehend that these difficulties would be sufficiently met by section 31 of the Bill, without the enactment of sections 32 and 33.

Rent Papers II, page 580. *Provono Kumari Debi, &c., v. Mahtab Rodhin Report* (I. L. R., 3 Calc., 826).

Rent Papers III, page 609.

7. The objections are certainly numerous, and in some cases very strong. As the Bill originally stood, it would, in the opinion of Mr. Nolan, Officiating Collector of Shahabad, have conferred upon every tenant of a house in Calcutta with a lease of which twelve years were unexpired, an occupancy right in his compound. The Bill (section 1) does not now extend to Calcutta; and it has been made clear by excluding municipalities of the first and second class from the operation of sections 32 and 33, that the provisions thereof are not intended to apply to considerable towns. Under the definition of "*basta*" land in section 3 of the Bill, I

Rent Papers III, page 719; see also Mr. Halliday, Rent Papers III, page 878; and Babu Mohini Mohun Roy, Rent Papers I, page 93.

Digest art. 7.

understand that all resident ryots will have a right of occupancy in their homesteads, and, indeed, according to the judicial rulings, homestead land is deemed to be used for agricultural purposes. Sections 32 and 33 will therefore affect the non-agricultural population in villages and small towns which are not municipalities of the first or second class. Such population may, it seems, be roughly divided into, *first*, miscellaneous dependants, corresponding to some extent to the village servants or *kamia log* of Upper India, such as fishermen, washermen, milkmen, oilmen, and petty artisans, and the like; and *secondly*, the shopkeepers. It is doubtful whether the first class would ever be molested, and their rents, it appears, are usually adjusted by customary payments, often made in kind; whilst to confer transferable occupancy rights upon the second class might foment dissension amongst zamindars seeking to establish markets.

Rent Papers III, pages 454-5.
Rent Papers III, pages 491-2.

8. These difficulties are forcibly urged by the Behar Landholders Association and Raja Promothonath Roy of Dighapattia, whose remarks deserve perusal. The Bill would apparently give a *zur-i-peshgi thikadár** a right of occupancy in the zamindari cutcherry. Mr. Barlow points out that long leases now current are not saved. In the opinion of some, the "market value" in section 33 is too vague a standard. The East Bengal Landholders Association and the British Indian Association, both representing the interests of the zamindars, are strongly opposed to sections 32 and 33. The zamindar's view is well summed up by the latter. The cultivating ryot is secure. To confer occupancy rights upon manufacturers and shopmen is, in its opinion, to confiscate the landlord's property. The maximum rent is fixed in section 33 at an arbitrary figure. Many think it too low. The five per cent. in the Bill was a tentative suggestion, to be altered if a different ratio were found on inquiry to prevail. I do not discover that any investigation has been made as to the rents actually paid by non-agriculturists, in villages and small towns, as to how far their position is regulated by local custom, or as to the general conditions of their tenure of building land. On the whole, I think it would be wise, as a concession to the landlords, if on no other ground, to omit sections 32 and 33 from the Bill.

Rent Papers III, page 612. Mr. Barlow.
Rent Papers III, pages 320. Babu Surji Narain Singh.
Rent Papers III, page 327. Mr. Stevens, Collector of Dacca.
Rent Papers III, pages 373-4.
Rent Papers III, page 366.

* Rent Papers I, page 52; Rent Papers II, page 218.

* A *zur-i-peshgi thikadár* sometimes to be indistinguishable from an ordinary mortgage, but the transaction may be a lease for a certain term, the rent for part of such term being paid down in a lump sum in advance on entering into possession. *Zur-i-peshgi* simply means money in advance.

9. The sections above discussed are annexed for easy reference :—

81. When land used or let to be used for agriculture, horticulture, pasture, or any other similar purpose is held by any ryot, he shall not, without the permission of the landlord of such land, use any portion thereof for building or any other purpose inconsistent with that for which it was used or let to be used as aforesaid : Provided that a ryot may without such permission erect upon such land a dwelling-house suitable for the use and occupation of himself and his family, together with such out-houses and offices as may be necessary thereto. Any ryot using land in contravention of the provisions of this section shall be liable on the suit of his landlord to pay by way of damages such sum as the Civil Court may deem equitable, and also to be ejected from the holding within which such land lies, if the Court be of opinion that the award of damages alone would not sufficiently meet the requirements of the case.

82. (a) When land used or let to be used for building or any purpose other than agriculture, horticulture, pasture, or the like, has been in the immediate possession of a tenant, whether under or without a lease, for the full period of twelve years after the commencement of this Act, such tenant shall, in the absence of any contract to the contrary, acquire a right of occupancy in such land, and shall not be liable to be ejected :

Provided that this section shall not be deemed to apply to any land situate within the boundaries of any municipality of the first or second class, constituted under the Bengal Municipal Act, 1876.

Explanation.—The possession of the father or other person from whom the tenant inherits shall be deemed to be the possession of the tenant, within the meaning of this rule, for the purpose of acquiring a right of occupancy.

(b) The interest of the person who has so acquired a right of occupancy shall be heritable, transferable, and devisable, and shall be liable to sale in execution of any decree of the Civil Court.

(c) If such tenant makes default in paying the rent of such land, the land, together with the buildings or other works thereupon, may be brought to sale in execution of a decree for arrears of such rent and shall be subject to the provisions of section 56 : Provided that any such tenant may be ejected for a breach of any condition of his tenancy for which breach he is liable to ejectment by virtue of a contract between him and his landlord, and which cannot, in the opinion of the Court, be justly made the ground of compensation to be paid to the landlord.

83. When a tenant has acquired a right of occupancy in any land under the provisions of section 82, if the rent of such land has not been enhanced during the previous ten years, the landlord thereof shall be entitled from time to time to enhance such rent, so that it may be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used for similar purposes, or so that it may be equal to five per centum of the market value of such land.

CHAPTER VI.—OF MERGER.

Bill I—Sections 43-45.
Bill III—Sections 34-36.

[References.—*Rent Papers*—I, pages 65, 52, 53, 135, 136; II, pages 214, 227, 240, 314, 373; III, pages 436, 481, 508, 512, 520, 573, 576, 593, 598, 604, 608, 610, 613, 615, 628, 644, 660, 665, 675, 683, 701, 707, 720, 764, 765, 825, 826, 863, 878, 889, 893, 898, 914, 926, 933, 947, 996, 1007; IV, pages 24, 49, 50, 261, 262, 505-6.]

1. This is a highly technical subject, on which the advice of the Legislative Department will probably be sought. I remark upon it with the greatest diffidence, because I am not sure that the matter can be fully understood without a competent knowledge of the English law of real property, which I do not possess.

2. The chapter is new; but section 36 is said to be merely declaratory of the existing law. The general principle is, that where a person holding an estate, tenure, or under-tenure becomes possessed of a subordinate tenure or occupancy holding in such property, only the superior interest shall survive. This rule is subject to certain exceptions, and the effect of the Sale Laws is saved. The operation of the rule may be prevented by a declaratory and registered deed, published on the land in question.

Rent Papers IV, page 24.

3. The Lieutenant-Governor observes that the provisions of this chapter are generally approved; and certainly it is either passed over or noticed with assent in many of the opinions. His Honour has accepted the proposals of the Commission; but he has added (1) a proviso allowing the period of three months within which the declaration preventing the merger shall be made to run, in certain cases, from the commencement of the Act; and (2) words to prevent the conversion of *ryoti* (or village) lands into *khámár* (or landlord's private lands) by means of merger.

4. In favour of legislation, a case is quoted by Mr. Field where a *patnidar* created a *darpatni*, which he himself afterwards bought. The *patni* tenure passed by purchase to another, and the original *patnidar* then appeared in his character of *darpatnidar* claiming to collect the rents from the ryots. In the discussions of the Rent Commission, Messrs. Dampier,

Rent Papers II, page 373; see also Rent Papers III, page 613.

Rent Papers II, page 214.

Harrison, and Field alleged the existence of abuses; and a case was adduced in which it had been proposed to allow a settlement-holder some 50 per cent. collection expenses for collecting rent from himself in four or five different capacities.

5. Reasons against the proposed law are forcibly stated by Mr. Nolan, Collector of Shahabad.— Rent Papers III, page 720.

"The proposal," he says, "as to merger seems to come to this, that we are to introduce into the interior of Bengal a very technical rule of Norman English law, which was never so domesticated in England as to acquire an English name; which was never applied in its integrity, as it was always qualified by equity; and which is now discredited and nearly abolished. This rule is in Bengal to be qualified by the power of the person against whom it is directed, to prevent its operation by going through a particular form, but in no other way. Such hard-and-fast rules, and such forms to disarm them away, are dear to the hearts of lawyers, but are generally enforced at the expense of laymen. No inconvenience has been felt from the present state of the law. The case quoted by Mr. Field at page 370 shows not a defect in the law of merger, but in that of registration, our system in that department not being as yet sufficiently perfect to enable any one to ascertain readily the encumbrances against an estate he wishes to purchase. I regard this chapter as altogether out of place in a law as to the relations of landlord and tenant, and I think that it might, with advantage, be expunged."

Mr. Nolan's experience is not confined to the Behar districts; he served, for instance, in Pubna. Otherwise the remark might have been pertinent, that provisions as to merger may only be required where sub-infeudation is excessive. Certainly in respect to my own province, the Punjab, I should strongly deprecate such a law. Titles are comparatively simple; purchasers can generally take good care of themselves; the record-of-rights provides evidence as to the material facts touching any holding; the procedure by which merger could be prevented would be unknown to the rustic community; and the subordinate judicial Courts would be sure to misunderstand the law if they were called upon to apply it, which would rarely, if ever, be the case.

6. Of the other criticisms, I note the remark of Mr. Pellew, Commissioner of the Dacca Division, that there is no custom of merger in Backergunge. Indeed, it seems, so far as these papers show, that the practice in districts has been to keep separate the several interests acquired, so that the rule of the Bill would run counter to some successions of instances which might be proved to exist. In the practical illustrations given by Mr. Newbery, of Bhágalpur, (1) a sold-up zamindar seeks to Rent Papers III, page 923. Rent Papers III, page 914. Rent Papers III, page 804.

hold on to his private land as an occupancy tenant, and (2) a twenty-years' lease-holder of a whole village, at the expiration of his lease, claims as an occupancy holding the portion in his personal cultivation. In the first case it is thought there would be injustice to the purchaser; but it must be remembered that in the North-Western Provinces it has been deemed right to confer upon ex-proprietors occupancy rights in their *sir* land. The East Bengal Landholders Association anticipates difficulty, injury, misapprehension, and litigation, but it does not distinctly say why. The British Indian Association thinks the chapter an improvement upon the existing law. Cases are put by Mr. Westmacott, of Noakháli, which suggest the doubt whether the applicability of the doctrine of merger in the peculiar circumstances of all localities has been fully considered. A landlord, or a farming lessee, may purchase subordinate interests; the former loses his estate by a flaw in his title, the lease of the latter expires. Are both to be deprived of the tenures which they have bought for hard cash? It may be said that either could protect himself by a declaratory deed; and where transactions in land were not entered upon except with legal advice, this would be a satisfactory answer. But, in such business, how far is legal advice generally sought in remote and backward districts?

Act XII of 1881, sec. 7.

Rent Papers III, page 973.

Rent Papers III, page 996.

Rent Papers III, pages 914.

7. Again, there is more than one opinion to the effect that the operation of the proposed law could easily be evaded by *benámi* purchasers, *i.e.*, fictitious purchases in the name of some third person. Mr. Reynolds simply says that provision cannot be made in the chapter to meet the case of tenures held *benámi*. The next chapter, on registration, to which he alludes, may go to secure evidence of the existence of incumbrances, but it will not, I apprehend, affect their character. Possibly it is thought that the question of *benámi* transactions is too large a one to handle in conjunction with the present complex Bill. But if the presumption of merger can easily be defeated by a *benámi* purchase,—and I do not see that it cannot,—what is the good of inserting it in the law? The dishonest purchaser would assuredly prefer this covert method of effectuating his intention to the frank declaration allowed him by the Bill.

Rent Papers III, pages 913, 914.

Rent Papers IV, page 202.

Rent Papers III, page 947.

8. To the objection of the Behar Landholders Association regarding section 36 as diminishing the rights of ryots in estates which pass into the hands of the Government, Mr. Reynolds replies by the

Rent Papers IV, page 202.
Rent Papers III, page 496.

remark that the section enacts nothing new. I should have supposed from paragraph 5 of the Report of the Commission that it determined a moot point. However this may be, does not the subject-matter rather belong to the law of settlement of Government estates (which the Commission refrains from discussing) than to the law of landlord and tenant? There can be little doubt that the question of the powers and procedure of settlement officers in Bengal must be dealt with when the present Bill is off the hands of the Government, and possibly this section might conveniently be excluded from the present measure. I call attention to the point, because the section would prevent a distinction being drawn between rent and land revenue in estates acquired by Government; whereas, if it be eventually decided to put the settlement of such estates on a footing like that which is usual in Upper India, it might be convenient to distinguish in a decisive way between the two forms of charge, to leave rent to be settled by the Civil Courts, and to bar their jurisdiction in questions of land revenue.

See the correspondence at pages 208 to 241 of Home Papers, Vol. IV.

9. The sections are difficult and must be read *in extenso*. I therefore transcribe them below :—

34. (a) When by purchase at a private or public sale, by gift, succession or will, the same person becomes the proprietor of an estate and the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest, and to be extinguished by the fact of the same person being owner of the estate and the tenure, subject, however, to the following conditions :—

(1) Such person must be owner of the estate and the tenure in the same right and at the same time.

(2) The presumption shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind.

(3) Such merger shall not operate to the prejudice of any person having a lien upon such tenure or of any under-tenure-holder or ryot.

(4) Subject to the provisions of the law for the time being in force relating to sales of land for arrears of Government revenue, and subject to the provisions of this Act as to sales for arrears of rent without, or in execution of, a decree, such proprietor shall have the same rights and be subject to the same liabilities as the previous holder of such tenure had, or was subject to, in respect of those persons between whom and such tenure-holder the relation of landlord and tenant existed :

Provided that when, in the case of two or more persons being co-parceners, one or more, but not

Proviso.

all, of such persons become the owners of a tenure in such estate, no merger shall take place.

(4) Upon the expiry of three months from the date when such person so became owner of the estate and the tenure, such contrary intention may be proved in the following manner and not otherwise,—that is to say, by the production of a deed declaratory of such intention and duly registered within such period of three months, and by proof that a copy of such deed was published in the manner provided in sub-clauses 4 and 5 of clause (a) of section 219 for the notification therein mentioned:

Provided that if such person become owner of the estate and the tenure before the commencement of this Act, the said period of three months shall run from the commencement of this Act.

33. The provisions of section 34, so far as they are applicable, shall apply, *mutatis mutandis*, to a tenure-holder acquiring an under-tenure of the first degree; to an under-tenure holder of the first degree acquiring an under-tenure of the second degree; and so on in order; and also (subject to proviso in clause (*f*) of Explanation 4 of section 19) to a proprietor, tenure-holder, or under-tenure holder acquiring an occupancy holding, the rent of which was previously payable directly to such proprietor, tenure-holder, or under-tenure holder.

34. It is hereby declared to be, and to have always been, the law in the territories under the administration of the Lieutenant-Governor of Bengal that, when the Secretary of State for India in Council acquires an estate by purchase or otherwise, the proprietary interest in the land included in such estate is merged in the paramount title of such Secretary of State, and extinguished by the fact of such proprietary interest and such paramount title meeting in the same person. The third and fourth conditions mentioned in clause (*e*) of section 54 shall apply to every such estate acquired by the Secretary of State for India in Council. Nothing contained in this section shall be construed to interfere with the operation in any such estate of Act VIII of 1879 passed by the Lieutenant-Governor of Bengal in Council, or of any Act for the time being in force for the recovery of public demands.

Illustration.

An estate named Sultanpur is purchased by the Collector of Burdwan on behalf of the Secretary of State for India in Council at a sale for arrears of land revenue. *A*, *B* and *C* are ryots holding land included in this estate, and before the sale they paid certain annual sums as rent direct to the proprietor of Sultanpur. After the sale they are liable to pay the same annual sums to the Secretary of State for India in Council, and such sums are so payable not as rent, but as land revenue.

CHAPTER VII.—OF THE REGISTRATION OF TRANSFERS OF TENURES, UNDER-TENURES, AND OCCUPANCY HOLDINGS.

BILL I—SECTIONS 46-54.

BILL III—SECTIONS 37-46.

[REFERENCES.—*Digest*—Articles 25, 37, 28, 29, 32, 33, 41, 153, 154, 156: *Land Papers*—I, pages 53-5, 196-9: II, pages 244, 261, 302: III, pages 427, 481, 504, 520, 545, 550, 555, 570, 588, 576, 593, 599, 604, 608, 610, 613, 615, 621, 624, 637, 644, 654, 655, 660, 666, 674, 685, 699, 701, 707, 720, 731, 764, 765, 837-9, 873, 878, 892, 899, 914, 950, 956, 959, 917, 936, 967, 997, 1007: IV, pages 24, 30-1, 220, 223, 237-10.]

1. This chapter differs from the two chapters last under consideration, in that the main principle upon which it proceeds is not a novelty; for the law already requires the registration of transfers of tenures and under-tenures in the *zamindári*, or record office of the zamindar. The Bill, however, extends the law mainly in two directions—*first*, it prescribes the registration of transfers of occupancy holdings, hitherto exempt; and *secondly*, it generalises the penalty of attachment, now enforceable only in the particular case of the non-registration of sales of *patni* tenures in execution of decree or for arrears of rent, so as to render it applicable to all tenures, under-tenures, and holdings whenever the proper registration is neglected. A distinction, however, is drawn between tenures and holdings, the consequences of non-registration being rather different in the case of the latter. The general object—to improve the record of the facts relating to any given estate—is, it will be universally admitted, excellent. The main question seems to be, by what procedure this object can best be attained—whether by the private registration here proposed, or by some system of registering through public officers, even if the idea of anything resembling a general record-of-rights be deemed impracticable.

Digest, art. 43.

Report, para. 117.

2. The first remark, which naturally occurs to an up-country officer on reading over this chapter of the Bill, is that an end which, under different revenue conditions, may be reached with simplicity and directness is here pursued by a somewhat difficult and circuitous route, and one, perhaps, not without some pitfalls by the way. In the Punjab transfers and successions are brought upon the record-of-

rights by order of the Courts or revenue officers in cases which necessarily come before them, such as sales for arrears or execution of decrees; and in other cases, by competent official direction on the report of the *patwári*, *kánungo*, or *tahsildár*. Subordinates could be punished for neglect; and it is the interest of the *patwári* to make his report, because he is allowed one-fifth of the fee. It is also the interest of proprietors and occupancy tenants that facts affecting them shall be duly recorded, because, without offering an opinion as to whether the presumption of accuracy annexed by law to the settlement record-of-rights would extend to mutations in the record made after settlement, it may be safely asserted that the Courts would attach very great weight to mutations properly supported by authority.

Rules under the Punjab Land Revenue Act XXXIII of 1871, S. 1, secs. 1-14.

Rule 13.

Act XXXIII of 1871, sec. 16

3. The Bill proceeds on a totally different system. It seeks by rules regarding the liability for rent to make it the interest of the transferror and the transferee to have the transfer registered. The tenure-holder or occupancy ryot may be compelled to register by attachment or the sequestration of the holding; the zamindar may be compelled to admit to registry by a civil suit, and may be cast in damages if pecuniary loss has occurred. The Board of Revenue is to prescribe registration forms; but with this exception, there is no responsible supervision. All is left to the act of parties; and it does not appear that registration must take place, if all agree to avoid it and abstain from bringing the law to bear upon each other. Lastly, to meet the case of small estates where there would be no rent office, and other cases where it would be impracticable to carry out the procedure of the Bill, registration may, under official cognisance, be altogether waived and the mere receipt of rent deemed to be its equivalent.

Rent Papers III, page 314.

4. This plan has been suggested by circumstances which have *not*, so far as I am aware, occurred in other Provinces. It seems to be the offspring of the old *patni* Regulation. The zamindars of the permanent settlement—many of them Rajas or the representatives of the powerful official aristocracy of former days—began to copy, in miniature, within their estates the revenue institutions of the country. They demised their property on terms similar to those on which they held in chief; and in course of time this process was recognised by the Legislature. Thus the incidents of *patni* tenures were

Report, para. 136.

assimilated in many respects to those of revenue-paying estates. They were liable to sale for arrears; incumbrances were avoided on such sales taking place; transfers were to be registered by the zamindar, who was further entitled to a fee on the transaction, and to demand substantial security from the transferree to the amount of half the yearly rent. He might also, as already mentioned, enforce his rights by the attachment of the tenure in certain cases. As an analogy to the joint responsibility of the village or survey number in revenue systems elsewhere, I may mention the rule that no apportionment of the rent should be allowed to stand good unless made under the special sanction of the proprietor. Act X of 1859 moved some degrees down the successive steps of sub-infeudation, by requiring "all dependent *talukdárs* and other persons possessing a permanent transferable interest in land intermediate between the zamindar and the cultivator to register in the *sarrishta* of the zemindar or superior tenant, to whom the rents of their *taluks* or tenures were payable, all transfers of such *taluks* or tenures or portions of them by sale, gift, or otherwise, as well as all successions thereto or divisions among heirs in cases of inheritance." The Bill presses the same set of ideas down to a still lower stratum of the rural hierarchy. Successions to, and transfers of, occupancy holdings must be registered. The right of attachment is, after notice, extended to all tenures and under-tenures. Similarly, the landlord may apply to a Civil Court to place an occupancy holding, where there has been a failure to register, at his disposal as unoccupied *ryoti* land. Security may be demanded from all transferees and devisees of permanent tenures and under-tenures. It is waived in respect to occupancy holdings, for the good reason that the superior has ample security in the power of distraint.

Digest, art. 28.

Report, para. 116.

Rent Papers IV, page 263.

5. The more important criticisms follow three main lines. It is suggested—*first*, that the provisions of the Bill are impracticable, from the absence of rent offices or the small size of the holdings; and so far the difficulties indicated have been met by, in substance, allowing the Board of Revenue to exempt estates from the rules: *secondly*, it is urged that zamindars may abuse the authority conferred on them, either by making exorbitant demands on the occasion of transfers, or by accepting the fees without effecting any registration, or by utilising the actual or pretended failure of the ryot to oust

Rent Papers III, pages 477, 481, 604, 654, 673, 720.

Rent Papers III, pages 598, 644, 684, 720, 765, 828, 939, 947.

him from his land: *thirdly*, it is represented that the chapter will fail of its purpose as previous efforts in the same direction have failed, one reason being that the persons interested in land and the dependants and servants of the zamindars desire, for their own ends, that there shall be no accurate registers. One officer, the Collector of Faridpur, inclines towards a *patwári* system, in order to "put an end to the present utter uncertainty of rents, extent of holding, and payment of rent that prevails, without exception, all over Bengal." There are many votes for some sort of official registration either by the munsifs, or subordinate revenue officials, or rural sub-registrars.

Rent Papers III, pages 477, 615, 893, 926.

Rent Papers III, pages 598, 654, 914, 915.

Rent Papers III, page 610.

Rent Papers III, pages 477, 528, 598, 655, 707, 872.

6. Mr. Westmacott, the Collector of Noakháli, is a strong advocate of the latter system. He sees nothing in the proposed provisions which would not be evaded by the inaction of the people, and points out that every entry in a register is a blow struck at the power and profits of the rapacious zamindari *amla*. Mr. Reynolds says that it would probably be quite impracticable for Government to undertake the duty of keeping the registers in either the Revenue or the Registration Department; but this remark, of which the grounds are not stated, does not convince the District Judge and covenanted Deputy Collector of Bankura that the registration should continue to be performed in the rent office of the zamindar. The case for some kind of public registration is forcibly put by Mr. Westmacott in a passage which is worth quoting. "I believe," he says, "the principal reason of the failure of every attempt to secure punctual registration of transfers has been that both landlord and tenant consider it their interest to obscure as much as possible their mutual relations. This may have arisen partly from a traditional fear of allowing the State, the great taxing power, to know more of the truth than could be helped; but partly also from a mutual determination of each party not to be content with his own just rights, but to get the better of the other, if possible. While it has always been the object of the Legislature to define rights, it has, on the other hand, been the object of both landlord and tenant to leave their rights as indefinite, as obscure, and as inelastic as they could. Hence the frustration of every legislative attempt to secure registration of transfers or interchange of leases by a quiet obstructiveness on the part of both parties whom it has been desired to benefit. Averse

Rent Papers IV, page 263.

Rent Papers III, page 926.

Rent Papers III, page 914.

as I am generally to all legislative interference, except where a wrong cries out for remedy, I believe that this studied indefiniteness and obscurity, arising from the dishonest intentions of both parties, is an evil with which it behoves the State to grapple."

7. It does not seem out of place to suggest some apprehension as to the practical effect of section 43 of the Bill in parts of the country where the landlords are powerful, more especially when the general discredit of zamindari accounts and the ease with which evidence is manufactured or suppressed are borne in mind. The Collector of Shahabad—a Behar district—believes that a few months after the death of a ryot a landlord might, of his own authority and by his own agent, "forcibly eject from house and holding the heirs of the deceased, if they have not previously registered their succession." Babu Grish Chunder Sein, of Burdwan, writes: "This section, as it now stands, will, if enacted, give the landlord a new handle of oppression." * * * It "gives the landlord power of ejecting the holdings of such ryots who are poor and illiterate." Mr. Hewitt, Commissioner of Chota Nagpore, holds that, if the 12-years' rule for the acquisition of occupancy right be adhered to, the section "might be a most potent instrument of breaking down occupancy right." "What," asks Mr. Brett, the Judge of Jessore, "is to prevent a landlord from telling *A* that his transfer has been registered, and then saying that no registration has been effected?"

Rent Papers III, page 720.

Rent Papers III, page 644.

Rent Papers III, page 684.

Rent Papers III, page 765.

8. These objections relate to the original frame of the section, and have been met, to some extent, by the general extension of occupancy rights, by requiring the landlord to apply to a Civil Court, and (in accordance with the general policy of the Lieutenant-Governor) by preventing the use of the land, when at the zamindar's disposal, otherwise than as village land. But Mr. Finucane, another Behar officer, observes upon the section, even as amended by Mr. Reynolds, that it would, in practice, enable landlords to attach and hold possession of half the occupancy holdings in Behar. And Mr. Larminie, of Burdwan, remarks: "In cases of succession where the heirs are ignorant women and children, there is every reason to fear that the landlord would be able to get possession of the holding." The circumstance that under the Lieutenant-Governor's Bill the land will retain its character of *ryoti* land would be no consolation to an individual ryot unjustly dispossessed; and

Rent Papers IV, page 12, para. 25.

Rent Papers III, page 939.

See Rent Papers IV, page 309.

Rent Papers III, page 947.

the mere fact that the landlord would be obliged to go to Court might be a wholly insufficient protection. The landlord might, without difficulty, prove notice on the ryot to the satisfaction of the Court, as required by the end of the section; but the ryot would have to prove, in the teeth of the zamindari *amla*, that he had applied for registration within one month of such notice. How often is it likely that he would succeed? Apart from this, the power of attachment conferred by the first part of the section might, as is pointed out by Mr. Finucane, be used as a means of exaction and oppression.

9. Most of the amendments made by the Lieutenant-Governor in the Draft of the Commission relate to details which need not be considered till the Bill is in Committee, such as the amounts of the fees and pecuniary penalties and the time within which applications may be preferred. But His Honour has introduced one section of great consequence, because it corresponds, in some measure, with the provisions in other Rent Acts in restraint of transfer by private sale. I refer to section 38, which empowers the landlord to objec to register the private sale of an occupancy holding and to purchase the land, to be held by him as *ryoti* land, at the price fixed in the bargain. The object is to prevent the holdings in a zamindar's estate being bought up by a hostile proprietor. The subject properly belongs to the general question of the transferability of ryots' holdings, and possibly might be better dealt with in more definite connection with the substantive law instead of being introduced here as a proviso in the registration procedure. In the North-Western Provinces rights of occupancy, other than those of tenants at fixed rates, are transferable only as between co-sharers. Occupancy tenants under section 5 of the Oudh Rent Act have heritable rights which are not transferable. Under section 9 of the Khoti Settlement Act the rights of occupancy tenants are not transferable, unless the tenant proves that the right of transfer has been exercised in respect of the land in his occupancy, independently of the consent of the *khot*, or landlord, within a fixed period of time, or unless the *khot*, in certain cases, grants the right of transfer. In the Central Provinces it is proposed, in regard to one class of tenants, to permit transfer to co-sharers only; in regard to another class, to permit it in favour of the heirs of the transferror, but not otherwise. In the Punjab the statutory occupancy tenants may alienate, subject to the landlord's

Rent Papers IV, page 255.

Act XII of 1881, sec. 9.

Act XIX of 1868.

Bombay, Act I of 1880.

Bill, 31st July 1880, sec. 82

Act XXVIII of 1868, sec. 34.

CHAPTER VIII.—OF RENT, INSTALMENTS OF RENT, RECEIPTS FOR RENT, DEPOSIT OF RENT, APPORTIONMENT OF RENT, AND HYPOTHECATION FOR RENT.

BILL I—SECTIONS 55-64.
BILL III—SECTIONS 47-56.

[REFERENCES.—*Digest*—Articles 9 *note*, 11, 54, 55, 60, 61, 65, 67, 78, 99, 100, 101, 104: *Rent Papers*—I, pages 55-61, 90, 139-44; II, pages 213, 215, 218, 228, 229, 237, 244; III, pages 437, 478, 481, 492, 498, 504, 512, 530, 538, 576, 577, 593, 598, 602, 605, 608, 611, 613, 615, 624, 637, 645, 655, 660, 666, 674-5, 684, 695, 701, 708, 720, 721, 732, 739, 764-5, 831, 838, 863, 870, 872, 878, 883, 889, 893, 899, 915, 927-8, 933, 940, 947, 967, 997, 1007; IV, pages 24-5, 47-56, 263-6, 311-15.]

1. This chapter might be more briefly entitled *Of the Payment of Rent*, for its subject is when, how, and to whom rent is to be paid, together with a provision as to the security for its payment. Although some very considerable changes are made in the law, the points dealt with are almost entirely matters of detail; and there is, I think, only one section, *viz.*, the last, which raises any important question of principle.

2. *Instalments of rent, sections 47, 48.*—Recipients of rent under the existing law are bound to adjust the instalments according to the time of reaping and selling the produce; and this obligation may be enforced by a suit for damages. By usage or agreement the instalments are very frequent, often, it seems, monthly. The Commission proposed to correct this inconvenience to the ryots by declaring their rents to be payable in four specified instalments. The Lieutenant-Governor's Bill, however, keeping to four payments a year, leaves the Board of Revenue to fix the exact dates by notification with regard to the customs and harvests of the various districts. The rent-days for tenure-holders and under-tenure holders will follow custom or contract, or, failing these, the dates for the ryots' payments. Several officers suggest or express doubts as to the necessity for legislation, chiefly on the grounds that the interest of both parties determines present arrangements, that it is easier to find the means of

Digest, arts. 55, 67.

Rent Papers III, pages 666, 878.

Rent Papers III, pages 674 (Mr. A. Smith, Commissioner of Orissa), 720 (Mr. Nolan, Officiating Collector of Shahabad), 878 (Mr. Stevens, Collector of Dacca), 915 (Mr. Westmacott, Collector of Noakháli).

meeting small instalments, and that improvident ryots might spend the money before quarter-day came round. But in the North-Western Provinces the Local Government is empowered to make rules as to the dates on which instalments of rent shall fall due. The Famine Commission, in commenting upon the propriety of a suitable regulation of the instalments of land revenue, remarks that upon these must, to a great extent, depend the dates of the payment of rents; and indeed, if we admit the contention that "rent in Bengal is that share of the produce which originally belonged to the Government, and which has been assigned to the zamindars in return for a fixed annual payment,"* some, at least, of the arguments in favour of authoritatively adjusting the instalments of revenue to the seasons when payments can most readily be made, would be applicable in the present instance.

Act XII of 1881, sec. 211.

Report of the Famine Commission, Vol. II, page 127.

* A phrase of Mr. Reynolds', Rent Papers IV, page 246.

3. The Famine Commission further refers to provisions (recently modified) in the North-Western Provinces Rent Act relating to the suspension or remission of rent in cases of calamity, and expresses a hope that this principle will be more systematically applied both in those Provinces and elsewhere. As the law now stands in the North-West, when the land revenue is remitted or suspended an officer empowered by the Local Government may direct a corresponding remission or suspension of rent. The present Bill makes no proposal of this character. Section 48 directs that arrears of rent shall bear interest at 12 per cent.; and merely waives *the interest*, not the arrear, if the tenant can show that he was prevented by causes beyond his control from paying the instalment. Mr. Reynolds, in deference to representations in the landlord's interest, struck out this clause from the Draft of the Rent Commission; but the Lieutenant-Governor has restored it. In the absence of written agreement, arrears of rent already bear interest at 12 per cent. under the law in force in Bengal; and it will perhaps be thought that sufficient reason exists for a fixed rule, which could not be varied by contract, if excessive rates are common in other parts of Bengal, besides Orissa, where such a rate as $37\frac{1}{2}$ per cent. has been known to have been agreed upon.

Report of the Famine Commission, Vol. II, pages 128-9.

Act XII of 1881, sec. 23.

Digest, art. 101.

Rent Papers III, page 674.

4. There is apparently some error in the last clause of section 47. Changes in the days of payment should be notified three months before the commencement of the year in which they are to take

effect. It would be of little use to notify them three months before its close.

5. Receipts for rent, section 49.—Tenants are now entitled to receipts specifying the amount of rent paid in money, and the year or years on account of which payment is acknowledged. If a receipt is withheld, damages, not exceeding double the amount paid, may be recovered. Section 49 sets out in detail the particulars which are to be entered in the receipt; it directs that the landlord shall retain a counterpart; that every receipt which does not contain substantially the required particulars shall be deemed to be an acquittance in full; and that every tenant shall be entitled to a statement of account at the end of the year.* An omission in the present law, which does not provide for receipts on account of rents paid in kind, has been rectified; and its principle is extended so as to apply to any money recoverable as rent, and thus to include the road cess and sums payable under "The Bengal Embankment Act, 1873," "The Bengal Survey Act of 1875," and other enactments. When a receipt is withheld, section 94 continues the penalty of a suit for damages, subject to the limit above mentioned, and applies it also to the refusal of a yearly statement of account.

Digest, arts. 61, 65.

* See Mr. Beames, Officiating Collaboteur of Burdwan, on this document, Rent Papers III, page 854.

6. Of these changes, by far the most important is that which attaches a conclusive presumption in evidence to an imperfect receipt. I have explained in paragraph 16 of my Memorandum on the Rent Question in Behar the reasons for deeming such receipts to be acquittances in full. The remarks of Mr. Nolan, at whose suggestion (concurred in by several other Behar officers) the addition was made to the Bill, may be consulted. The evil is not so much that receipts are refused as that the ryot's accounts are garbled in the zamindar's papers. The rule of the Bill will be a protection to honest ryots; and no zamindar need be injured by it, who exercises ordinary care.

Supra, page 151.

Rent Papers III, pages 728-1. See also Collector of Purnea, Rent Papers III, page 813; and Mr. Halliday, Commissioner of Patna, Rent Papers III, page 890.

7. Mr. Reynolds omitted in his draft to oblige landlords to keep counterparts, fearing that the system would enable unprincipled zamindars to break down tenures claimed at fixed rates. The receipt might be lost, the counterfoil duly retained, and the latter fraudulently altered. It was, however, pointed out that the counterfoil system had been successfully worked in Orissa, that it was a security to zamindars against frauds on the part of the ryots, and that, in case of discrepancy, the Courts could judge between the counterpart

Rent Papers IV, page 264.

Rent Papers III, pages 894, 900, 907.

and the receipt. The Lieutenant-Governor has restored the mention of the counterpart; but he has struck out a clause proposed by the Commission for making landlords keep up bound books of forms. This plan seemed of doubtful practicability and unsuited to some parts of the country.

Rent Papers III, pages 472, 481, 520, 764.

8. *Deposit of rent in the collectorate, sections 50-3.*—The alterations in the law proposed by the Lieutenant-Governor go further than those recommended by the Rent Commission in paragraph 125 of its Report. Rent may now be deposited in the Civil Court only after tender and refusal to accept it or to grant a receipt. The Commission transferred the business of receiving deposits to the collectorate and sub-divisional treasuries, and added two cases in which deposit would be permissible, viz., (1) where the rent might be payable to coparceners, and the tenant could not obtain a joint receipt; and (2) where the tenant might entertain a *bond fide* doubt as to the person entitled to receive the rent. So far, the Lieutenant-Governor's Bill is to the same effect; but it also dispenses with tender as a condition precedent, allowing deposit whenever the tenant has reason to believe that the person to whom the rent is payable would not be willing to receive it; and it requires deposits to be accompanied by an eight-anna fee, notice being then served on the probable claimants of the rent, free of charge.

Digest, arts. 99-100.

9. It appears that the existing provisions of the law as to deposit of rent have been, to some extent, abused. The affirmation that tender has been made is usually false, and resort is had to the procedure when the ryots have fallen out with the zamindar or his agents, either by reason of attempted enhancement or from some other cause, such as exorbitant demands for perquisites by the zamindar's dependants. The eight-anna fee will be some security against unnecessary applications; and, under the altered terms of the Bill, it is no doubt but fair that the zamindar, who may not in any way be in fault, should not have to pay the cost of the notice. Many officers fear that the transfer of work to the treasuries, combined with the great freedom of deposit proposed to be allowed, will result in an overwhelming strain on the administrative machinery, at least at the seasons when rents are paid. But it is perhaps a sufficient reply to these apprehensions that the Lieutenant-Governor is empowered under the Bill to specially authorise any public officer to receive deposits, and that a block might be obviated by this means.

Rent Papers IV, page 205.
Rent Papers III, pages 538, 655, 668, 684.

Rent Papers III, page 915.

Rent Papers III, page 684.

Rent Papers III, pages 618, 625, 624, 627, 668, 695, 721, 909.

10. In the North-Western Provinces deposit is permitted (1) after tender made and refused, and (2) when, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect rent from a tenant. The first case is provided for in the Oudh Act, but not the second; and in Oudh applications to deposit require an eight-anna fee, and the notice on the supposed recipient is served without charge.

Act XII of 1881, secs. 50 to 53.

Act XIX of 1868, secs. 14 to 17.

Rent Papers I, pages 37, 38.

11. *Apportionment of rent, sections 54, 55.*—The objects of these sections are fully explained in paragraphs 127 and 128 of the Report of the Commission. The existing rules on the subject will be found in article 11 of the Digest. They apply to revenue-paying estates only. "There is no law," says Mr. Field, "for the apportionment of rent (1) when the interest of joint landlords in property other than a revenue-paying estate is divided; (2) when a landlord sells part of such property, the part sold including a portion only of a tenant's holding. The result is confusion and litigation." He adds that there is no express provision in the Estates Partition Act, when the tenure is assigned to more than one of the separate estates.

Digest, art. 11, note.

The Estates Partition Act, No. VIII (B.C.) of 1876, secs. 77, 87, 111, 125, 128.

12. Section 54 provides that when "two or more persons become separately entitled to separate portions of an area of land which forms the subject of a separate tenancy, and such portions of such area have been or can be divided by metes and bounds, such persons shall be entitled to have such rent apportioned, and after its apportionment to receive separately the shares of rent apportioned upon such portions respectively." And section 55 permits such apportionment to be made by agreement, or by order of Court if the parties cannot agree.

13. These rules, which are accepted by the Lieutenant-Governor as drafted by the Commission, have elicited very little comment. The Landholders of Chittagong say (apparently with some misapprehension) that the sections curtail the right of a coparcener, recently declared by a judicial ruling, to have his share of the rent apportioned by civil suit. Mr. Anderson, Collector of Bankura, concurs with the Commission. Mr. Hewitt, Commissioner of Chota Nagpore, thinks that the provisions of section 54 will be a great boon to the ryots of Bengal and Behar, who hold under a number of joint shareholders, but would not apply to the tenures of Manbhum and Singhbhum, where the rule of primogeniture prevails. The Bill, however, does not extend to the Chota

Rent Papers III, pages 481, 503, 655, 685, 704, 913.

Noagore Division. Mr. Westmacott, Collector of Noakhálí, holds that the present system of dividing landlords' rights is mischievous, and he deems it unsatisfactorily dealt with in this Bill. He would be inclined to consider the plan of keeping estates entire, subject to rent charges or mortgages. But partition has Indian usage in its favour; and if the Bill denies the tenant the right of paying his rent in one parcel in a divided estate, it confers on him ample opportunities of deposit when in any real difficulty. The sections will doubtless be considered unobjectionable.

14. *Hypothecation for rent.*—As already said, the proposals on this subject require attentive consideration, and I therefore reproduce here the section which relates to it:—

56. "(*a*) Every tenure, under-tenure, and bona-fide occupancy holding shall be deemed to be hypothecated for the rent thereof, and such rent shall be a first charge thereupon. When such rent is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof, save as provided in Chapter XIV, until he has first brought such tenure, under-tenure, or holding to sale either in a summary manner or in execution of a decree for such rent, as he is by this Act empowered in that behalf.

Every tenure, under-tenure, and holding to be deemed hypothecated for its own rent, which shall be a first charge thereupon.

(*b*) If any such tenure or under-tenure, or in any case in which a holding is so saleable, any such holding be brought to sale in execution of a decree for money, obtained by a person other than the landlord, such landlord shall be entitled to be first paid out of the sale-proceeds any rent which may be due to him in respect of such tenure, under-tenure, or holding; and the balance only of such sale-proceeds after payment of such rent shall be available for the liquidation of the decree-holder's claim, or for distribution among creditors entitled to such distribution.

Bourt Papers I, page 58.

Bill III, sec. 21, clause (*c*).

Referring to clause (*a*), the Commission observes: "A very important change is involved in these provisions. As the law now stands, the produce of the land is, but the land itself is not, hypothecated for the rent. The hypothecation of the produce is part of the law of distraint, which we have abolished." The Lieutenant-Governor, whilst retaining this clause, has restored the law of distraint in a modified form as exhibited in Chapter XIV, quoted in the section. The hypothecation of the land was one principal means of facilitating the recovery of rents offered by the Commission to the landlords in substitution for the system of distraint which the former disapproved. The plan of the Bill, as it is now drawn, is that a ryot with a right of occupancy cannot be ejected for non-payment of rent, but that

the landlord must either distrain the crop by application to a Civil Court and through its officer, or proceed to the sale of the holding either with or without decree. The summary sale procedure of the *patni* Regulation may, under section 148, be declared by the Lieutenant-Governor applicable to occupancy holdings where the Board of Revenue is satisfied that the landlord maintains a proper system of mauzadari accounts and of the registration of occupancy holdings, and that he regularly gives the prescribed receipts and statements of account to his ryots. Here, then, is another instance of the process already noticed in this Bill, of pressing down to a lower degree in the successive ranks of the rural economy the principles of management originally devised for dealing with holders-in-chief from the State. "Realisation," says the Commission, "of arrears of revenue or rent by the sale of the defaulter's interest is a principle now long established in the country and well understood by the people. That as a means it is successful we know from experience of its operation in the case of revenue-paying estates, *patni taluks*, and other tenures. We have every reason to conclude that it will be equally successful in the case of occupancy holdings." Ejectment, it seems, is not usually enforced; and where a ryot fails to pay, not because he will not, but because he cannot, the Commission appears to trust to the landlord to exercise mercy and forbearance and to stay his hand.

Bill III, secs. 104-7.

Report, paras. 129-30.

15. Realisation of arrears by sale of a landed interest may be an expedient procedure when it is morally certain that the defaulter has the wherewithal to meet the claim upon him, and is wilfully withholding just dues from the State or another person. It may further be supported by the necessities of the case where, from ignorance of a country or the absence of surveys and registers of estates, there is difficulty in identifying properties and their owners. But as particulars of a claim become more easily ascertainable and the administration is more perfectly organised, there is a possibility of proceeding directly against the assets of an individual in exact proportion to the demand which he ought to meet.* This principle has been recognised to some extent by the Bengal Legislature in the enactment of Act VII of 1880, the Public Demands Recovery Act, reproducing and extending the certificate procedure of Act VII (B. C.) of 1808, which enables the Collector to certify a demand *in personam certam*, his order then having the force

* The question here touched has been discussed of late in Notes regarding land registration and revenue management in the Sylhet District of Assám: see Revenue and Agricultural Department Revenue Proceedings, September 1881, Nos. 13-303.

of a decree of Court as regards the means of enforcement. To extend the system of sale of land for arrears of rent is, I would respectfully submit, a retrograde measure, because it foregoes that discrimination in individual cases which improved administrative arrangements render practicable. The objection may be waived in the case of tenures and undertenures, which are already in great measure practically hypothecated for their own rent, and in regard to which the substantial changes are not sweeping; and it will be observed that the power of summary sale without decree does not extend below permanent tenures of which the annual rent is not less than Rs. 50. Five-pound tenure-holders may possibly be strong enough to bear up against the threat of so severe a penalty as remorseless sale. But the position of the ryot, cultivating for his subsistence, is altogether different. As the Lieutenant-Governor puts it, "his occupancy holding is often all that he has, and he would generally if sold out of his holding be simultaneously deprived of his house and homestead. Summary sale without decree, after service of a notice, which, however duly proved, he probably never saw, would mean to him utter ruin, without warning and without remedy. The Lieutenant-Governor could never consent to any such procedure as of general or ordinary application." Even in the cases to which it is proposed to limit the landlord's right to this drastic method of asserting his claims, I cannot discover any provision in the Bill which would save the ryot from being sold out of his livelihood for no wilful default when his crop had failed or been destroyed by caprice of flood or season. Let the holding be hypothecated for the rent, if necessary, as lands are hypothecated for land revenue in Upper India, but do not trust to the tender mercies of zamindars; still less force them to proceed to sale in preference to other measures for realisation. If it be true that the status of the Bengal ryot is properly analogous to that of the peasant proprietor in other parts of the Indian continent, let him not be sold out of land and house and home except in the last extremity and for contumacious, not for helpless, default. Were there a complete record of all rights in land which could fairly be presumed to be true, and were such record duly maintained, it might be quite possible to arm landlords, on application to the revenue authorities, with the means of collection usually employed in the Northern and Central Provinces for realising arrears of land revenue. Notices might be served through the authorities;

See para. 122 of Report.

Bill III, sec. 147.

Rent Papers IV, page 8.

moveables might be attached; the defaulter might be imprisoned;—but his land sold only in the last resort. It will be seen that the proposal of the Lieutenant-Governor in section 148 of the Bill is merely tentative.

Rent Papers IV, page 8.

16. In support of the above view, I would cite a passage from Mr. Nolan's opinion, which is, I believe, warranted* by the revenue history of Bengal:—

Rent Papers III, page 726. See also Mr. Stevens, Rent Papers III, page 679.

"I can imagine," he says, "how the consideration of the facility with which Government revenue is now collected under the Sale Laws should prepossess some persons in favour of the system. But it is to be remembered at what a cost this system has been established. Almost all the old landed proprietors were sold out in a generation and the land transferred to auctionpurchasers, generally either Government servants, or the agents of the ruined landlords. The whole land of the country might have been confiscated, and given to new owners without a greater disturbance of the social system. Is it contemplated that the new Sale Law should do for the ryots what the old Sale Law did for the zamindars of 1793? Our experience of the effect of introducing a rigorous system of Sale Laws is this, that they ruin the actual holders of the tenures to which they are applied, substituting new men, who, with such a warning before their eyes, pay with punctuality. In their second stage, after the old proprietors have been ousted, Sale Laws work well on property of value, such as *talukhs* and *putnis*. Perhaps when that stage was reached such laws might work well on occupancy tenures also. But I presume it will hardly be considered advisable to take steps for the ejection of the present race of occupancy tenure-holders in the hope of getting a better in its place. The political inconvenience of such a course would alone be sufficient to condemn it, independently of the amount of misery it would cause."

17. There can be no doubt that the landlords desire that occupancy holdings shall be saleable by the summary procedure, but some of the opinions do not show much eagerness for the boon. The Behar Landholders Association objects to section 56, though the gist of its objection is really the previously suggested abolition of the law of distraint. The Maharaja of Burdwan thinks that the clause under consideration, taken with clause (*b*) of section 220 (which compels the decree-holder to bid, if no other bid is made), would be a source of grievous injustice to the zamindar. The East Bengal Landholders Association is dissatisfied, because in sparsely-populated tracts the sale of the holding will not, in its opinion, pay the arrears; and this view may not be unreasonable,

Rent Papers III, page 497.

Rent Papers III, page 838. His remarks, however, refer mainly to tenures.

Rent Papers III, page 577. But see its observations at page 585.

* "It is said that nine-tenths of the land of Bengal were advertised for sale within a few years after the Permanent Settlement, but the actual sales were, although numerous, but a small proportion of the sales advertised, and many of the sales which actually took place were collusive."—*Report Land Tenures, 1874, page 606.*

Rent Papers III, page 811.

for Mr. Barlow, Commissioner of the Bhágalpur Division, has been asserted that in parts of the country where fresh land is procurable, often at lower rent than an old holding, an occupancy right usually fetches less than one year's rent at sale. In the opinion of Mr. Pratt, Officiating Collector of Purneah, the hypothecation of the land for rent is, so far as the landlord is concerned, a very poor substitute for distraint, unless summary sale is permitted, which should, however, be guarded by certain precautions which Mr. Pratt did not find in the Bill of the Commission. Mr. Wace of Birbhúm would empower the Lieutenant-Governor to suspend in years of scarcity the provision compelling resort to sale. Mr. A. Smith, Commissioner of Orissa, points out that clause (3) of section 253 of the Bill makes it the interest of the landlord to see that sale is effected within six months of the date of decree. Other opinions more or less hostile to the proposals of the Commission are summarised by Mr. Reynolds, but need not be cited here, as several of them are mixed up with discussion of the impracticability of doing away with distraint. I will only observe that Mr. MacDonnell, the Collector of Sárun, correctly points out that the Commission vacillated on the question of making the landlord proceed first against the occupancy right, reversing unanimously at their sixteenth meeting the decision they had come to, also unanimously, three days before. I should add that there are some opinions in favour of clause (*a*), notably that of the British Indian Association, which considers that the land, as well as the crop, ought to be hypothecated for the rent. I have made some further remarks regarding summary sale in paragraphs 4, 5 and 6 of my Note on Chapter XVI, to which I beg a reference.

Rent Papers III, pages 809-4.

Rent Papers III, page 697.

Rent Papers III, page 874.

Rent Papers IV, pages 265-6.

See Rent Papers III, pages 708, 712, 726, 727, 729, 733, 734, 831, 834. See also Mr. Larminie (Rent Papers III, page 947) on Mr. Reynolds' Section 56.

Rent Papers III, page 728.

Rent Papers II, pages 228-9.

Mr. Stevens, Rent Papers III, page 876.

Mr. Westmacott, Rent Papers III, page 916.

Rent Papers III, page 907.

Infra, pages 125-8. See also Note on Chapter XVII, pages 130-4.

18. *Clause* (*b*) *of section* 56 calls for no explanation beyond that given in paragraph 133 of the Report. It was added by Mr. Reynolds, and I have traced hardly any objections to it. The Munsif and Government Pleader of Burdwan believe that decree-holders would be afraid to bring holdings to sale, lest they should prove to be merely working to recover the landlord's rents for him. The British Indian Association represents that the landlord will be injured, because his charge will diminish the price realised at the sale. The clause is inserted for the benefit of the landlords; and, as Mr. Reynolds points out, if they do not wish for it, there cannot be the least objection to its omission.

Rent Papers III, page 643.

Rent Papers III, page 907.

Rent Papers III, page 1007.

CHAPTER IX.—OF COPARCENERS.

Bill I—Sections 65-70.
Bill III—Sections 57-62.

[References.—*Digest*—*Articles* 16, 60, 87 (*Explanation*), 194; *First Report*—I, pages 612, 90, 95, 144-6; II, pages 237, 244; III, pages 408-9, 478, 481, 496, 521, 577-80, 594, 599, 606, 608, 611, 616, 628, 637, 645-7, 653-6, 661, 687, 675, 685, 695, 701, 721, 732, 764, 765, 850-80, 884, 878, 895, 900, 916, 925, 947, 998, 1007; IV, pages 25, 59-61, 266-7, 315-17.]

1. The Lieutenant-Governor has here departed very little from the *Draft* of the Commission, and has accepted without alteration the sections as revised by Mr. Reynolds.

2. Two distinct matters are dealt with—one relating to coparceners, jointly owning an estate, tenure or under-tenure, as a body; and the other to the separate rights of individuals in such a coparcenary. Sections 57 to 60 provide for the appointment of a common manager when the coparceners disagree, and inconvenience to the public or injury to private rights has ensued, or is likely to ensue, in consequence. Sections 61 and 62 limit the powers which may be exercised by individual coparceners without the co-operation of the rest. In the case of disagreement, as above, the District Judge may call upon the coparceners to show cause why they should not appoint a common manager. If no sufficient cause be shown, he may direct that such an appointment be made; and if such order be not complied with, he may make the appointment himself or place the property under the Court of Wards, supposing the latter assents to the arrangement. Rules are laid down as to the salary, powers, duties, and removal of managers, and for the restoration of the estate, &c., to the coparceners if prepared to manage it properly. As regards the several rights of individual coparceners, rent is to be paid on the joint receipt of all the coparceners or of a manager, and one coparcener may not sue for his share of the rent separately. But exception is made (1) where the tenant has contracted to pay a share of the rent separately; (2) where he has been in the habit of so doing; and (3) where the particular coparcener cannot get his share of the rent in consequence of collusion between the tenant and the other coparceners. Lastly, one coparcener may not bring a tenure to summary sale, or measure the lands, or enhance the rents of the tenants, otherwise than conjointly with his co-sharers.

Digest, xxtx. 60, 97.

3. Sections 61 and 62 reproduce the case-law according to Mr. Field's interpretation, and perhaps raise no question which would not be better considered in Select Committee than at the present time. It cannot be said that they have escaped criticism, for they are strongly opposed in whole or in part in several of the non-official opinions—as, for instance, in that of the East Bengal Landholders Association, which considers that section 62 virtually takes away all right of property from landlords who have the misfortune to be joint owners. Very possibly there would be no serious objection to coparceners measuring or enhancing separately when they have divided their ryots by common consent, without recourse to formal partition. This, as Mr. Stevens says, would be a concession to the zamindars, and it is difficult to see that it would do much harm where the practice of separate collections was well established and acquiesced in by the ryots.

Rent Papers III.—
Behar Landholders, page 439.
Raja Promothonath Roy, page 492.
Sreejl Narain Singh, page 521.
East Bengal Landholders, pages 578-80.

Rent Papers III, page 378.

4. Sections 57 to 60 require a good deal more consideration. The fact is that the Lieutenant-Governor has considerably extended the liberty of depositing rents beyond the proposals of the Commission, but has at the same time retained, practically in their integrity, those provisions of which the object is the same, *viz.*, to prevent the harassment of the ryots by the repeated or conflicting demands of co-sharers or their servants in joint undivided estates. His Honour's amendments merely (1) explain that no coparcener can apply to the District Judge with a view to the ultimate appointment of a manager, unless the applicant be in possession and registered under the Land Registration Act (thus meeting the objection that the procedure might be utilised by an outside claimant to gain a footing on the property); and (2) empower the Judge to appoint as manager one of the coparceners themselves. It certainly seems to be a strong measure to set aside joint proprietors, and to put in a manager nominated by public authority, and not necessarily one of themselves, on the rather vague grounds set out in section 57; and it is, I apprehend, a still more unusual proceeding to bring properties, for such reasons, under the jurisdiction of the Court of Wards. In a number of Acts it is practically laid down that joint undivided estates are not liable to the jurisdiction of the Court of Wards unless all the co-sharers are disqualified; and indeed the terms of section 58 (1), clause (*a*), seem opposed to the spirit, at least, of sections 7 and 11 of the Bengal Court of Wards Act, IX of 1879. The assumption

Bill III, sec. 60; Bill I, sec. 58. *Supra*, page 69.

Rent Papers I, page 61.

Act VII (B. C.) of 1876.

Oudh Act XVII of 1876, sec. 161.
Punjab Act IV of 1872, sec. 38.
Punjab Act XII of 1879, sec. 3.
Ajmere Regulations II of 1877, sec. 102.
The rule in North-Western Provinces Act XIX of 1873, sec. 193, differs.

by the Government of the management of estates, even on such grounds as the declared incompetence of the proprietors or their hopeless indebtedness, is always somewhat jealously regarded. The Broach and Kaira Incumbered Estates Act, the Sind Incumbered Estates Act, the Oudh Talukdars' Relief Act, the Jhánsi Incumbered Estates Bill as first entertained, are all recognised as measures of a highly exceptional character. But here, even on the probability of some public inconveniences or private injury, neither of which had actually occurred, it might be possible for Government management to be instituted. Not only is every unofficial opinion which I have noted decidedly adverse to these sections, but some of the most ardent champions of the ryots' cause amongst Government officers and one or two impartial officials recommend their omission or material modification. Thus Mr. Nolan argues that it is a palpable error that the ryots are impoverished by distrust and dissension amongst joint proprietors. Mr. Larminie, who is as eager an advocate of tenant-right as is Mr. Nolan, does not think that the necessity for these sections has been proved. "The ryot," he says, "is protected by his privilege of depositing rent, and the provisions of sections 61 and 62 tend to compel coparceners to act in concert. The proposed interference of the Courts in the matter of appointing managers would involve great trouble on the part of Government officers, and would, I venture to think, be generally impolitic." Mr. Anderson of Bankura, who was at first in favour of these sections, finally recommended their omission, in deference to non-official opinion.*

5. On the other hand, it is urged that the principle involved is merely that of the existing law, that intervention would be very sparingly exercised, and that the only innovation of importance consists in the extension to tenures and under-tenures of a liability which, under the Regulations of 1812 and 1827, already attaches to estates. But it seems that these old laws have been "almost inoperative," at all events for the last seven years, and possibly it might be expedient to ascertain how far they have been acted upon, say, within the last twenty years, before deciding to revive them. If they have practically fallen out of use, this is a reason against their reinforcement.

6. It must be admitted that official opinion, in the great majority of instances, declares with little or no hesitation in

See North-Western Provinces Land Revenue Act XIX of 1873, sec. 104 (g), as to powers declared by the Local Government, on their own application, to be disqualified from managing their estates. A similar provision is in force in the Panjab.

Baboo Peary Mohun Mookerjee and Moulvi Mohun Roy, Members of the Commission, Rent Papers I, pages 90, 95.

Behar Landholders Association, Rent Papers III, pages 498-9.

Chittagong Landholders, Rent Papers III, page 481.

East Bengal Landholders, Rent Papers III, pages 577-8.

British Indian Association, Rent Papers III, page 606.

Rent Papers III, page 721.

Rent Papers III, page 947.

Rent Papers III, pages 643-6, 926.

* See also the Collector of Mymensingh, Rent Papers III, page 616; Mr. Lewis, Commissioner, Chittagong Division, Rent Paper III, page 479; Mr. Westmacott, Collector of Noakhálí, Rent Papers III, page 916.

Report, para 195.

Digest, art. 16.

Mr. Reynolds, Rent Papers III, page 1007; Mr. Stevens, Rent Papers III, page 870.

Regulation V of 1812, sec. 28-7.
Regulation V of 1827, sec. 3.

Rent Papers III, pages 594, 599, 605, 608, 611, 620, 643-6, 667, 673, 682, 695, 701, 732, 809, 840, 878, 903.

favour of the idea of appointing managers. But another novelty beyond the extended application of this idea—the introduction, I mean, of the authority of the Court of Wards—is regarded with considerable doubt as a step which should rarely or never be taken. In particular, it is urged that management by the Court of Wards carries with it such substantial advantages in the exemption from sale on account of arrears of revenue, and the power of the Collector to realise rents without resort to the Courts, that to hold out a prospect of the Court's interposition would be almost to offer a premium on dissension amongst co-parceners.

Messrs. Paul, Newbery, Stevens, Anderson, Nolan, Worsley, Halliday, Rent Papers III, pages 856, 900, 946, 955, 721, 722, 900.

Messrs. Paul, Nolan, and Halliday, Rent Papers III, pages 694, 721, 900.

Bengal Act IX of 1879, secs. 29, 62.
Bengal Act VII of 1880, sec. 7, clause 6.

Mr. Worsley, Rent Papers III, page 722.
Mr. Halliday, Rent Papers III, page 900.

7. In one or two opinions it is pointed out that the effect of appointing a manager under this chapter would probably be to bring about a partition. I may therefore mention that a proposal for the amendment of the Bengal Partition Law is now under separate consideration. It is not intended to restrict the right of proprietors to divide an estate privately amongst themselves, but the suggestion is to allow no partition to be made by the Government in any case in which any separated share would pay a revenue below Rs. 10, so that the liability of the whole estate for the revenue assessed upon it, and for the discharge of the other duties imposed by law upon proprietors of estates, shall be maintained. If joint revenue liability and joint ownership under section 57 of the Bill are identical, the proposed amendment of the partition law will prevent petty proprietors, in such parts of the country as Tirhút and Chittagong, from escaping by partition from the sanctions of sections 57 to 60 of the Bill.

Bengal letter No. 691T., dated 7th July 1881.

8. I may add that those sections recall, though they do not exactly resemble, a recommendation made by Sir George Campbell several years ago, which was very decidedly negatived by the Government of India, with the approval of the Secretary of State. It was reported in 1873 that illegal exactions prevailed to a great extent in Orissa, and that the zamindars had not allowed the ryots the benefit of the remissions and advances authorised in the famine, and had been breaking the tenures of the more privileged occupants. It was proposed, as an example and punishment, to sequestrate the estates of three prominent offenders under Regulation VII of 1822, section 3, and Regulation IX of 1825, sections 1 and 2, on the ground that their "continuance" "in the management of their estates would en-

Revenue, Agricultural and Commerce Department Proceedings, April 1873, Nos. 404-5; Proceedings, January 1874, Nos. 94-97; Despatch to Secretary of State, No. 40, dated the 27th March 1874; reply No. 27, dated 14th May 1874.

danger the public tranquillity, or otherwise be seriously detrimental." The consequence would have been the dispossession of the zamindars for twelve years, a *malikâna* or allowance being granted to them. Here it is not expressly said that the coparceners may be dispossessed, but it seems to me that the appointment of a Government manager on the entry of the Court of Wards upon the estate would come to much the same thing, except that the actual income of the proprietors would not be reduced, as it almost certainly would be under a sequestration. The proposal of 1873 was rejected for the reasons that the law was uncertain and had not been enforced; but the discussions here show some feeling that distrust and suspicion might have sprung up if the contemplated interference with property had been countenanced. I see the East Bengal Landholders Association speaks of the chapter as bringing in a method for dispossessing proprietors of their lands, and vesting the management of all private landed properties in the State. The obvious rejoinder has been well made by Mr. Stevens. The State has no such idea, and the law would be but very rarely put in motion. Nevertheless, perhaps the sentiment which prompted the rather hasty comments of the Association should not be altogether disregarded.

Key, With Proceedings, January 1874, Nos. 34-37.

Rent Papers III, page 677.

Rent Papers III, page 678.

9. If the right of occupancy is to be widely extended and concessions have to be made to the proprietors, it might be considered whether sections 57 to 60 should not be sacrificed in the zamindari interest. Retaining, as they stand, sections 50 to 53, regarding the deposit of rent, and sections 61 and 62, with, possibly, some slight changes, it will perhaps be thought that there would not be so much ground for apprehension in behalf of the ryots as to warrant the usually undesirable course of Government management. At the same time, it may be observed that, under sections 25 to 31 of the Bombay Khoti Act (I of 1880), if the co-sharers fail to nominate a "managing *khot*" when there is no settlement agreement on the point, or if they are not unanimous in their nomination, the Collector may either select the managing *khot* for the year, or cause the village to be attached and taken under the management of himself or any agent whom he appoints for the purpose. On the other hand, the Central Provinces Bill (sections 45 to 47) contemplates that the manager shall be appointed by the co-sharers themselves.

CHAPTER X.—OF SOME MISCELLANEOUS RIGHTS OF LANDLORDS AND TENANTS.

Bill I.—Sections 71-86.
Bill III—Sections 63-73.

[References.—*Rent Powers.*—I, pages 62-5, 93, 149-54; II, pages 210, 215, 220, 221, 242, 281, 282-3, 286, 243, 244, 246-50, 256-8, 270, 294, 275-9, 285, 286, 287, 288-9, 400, 401-10, 444, 445-8, 458-9, 465 *note*, 467, 469, 471-3, 474-6; III, pages 432, 435-7, 481, 486, 493, 498, 505-6, 509, 512, 521, 525, 542, 555, 580, 590, 594, 596, 597, 598, 603, 605, 608, 611, 614, 616, 624, 628, 637, 639, 642, 645, 654, 657, 676, 685, 695, 701, 709, 722, 732, 745, 765, 767, 841-3, 862, 864, 872, 879, 884, 890, 895, 900, 905-8, 916, 921, 925, 941, 947, 969-70, 999, 1007, 1008, 1060; IV, pages 21, 25-6, 64-7, 267-70, 317-23, 384, 396.]

1. The provisions in sections 63 to 73 of the Lieutenant-Governor's Bill are of a very multifarious character, and cannot be conveniently noticed in any classified groups. Some alterations have been introduced; but the general character of the chapter will appear clearly from paragraphs 138 to 145, both inclusive, of the Report of the Commission. Although, for the most part, the case-law or fragments of the Regulations have been utilised, there is a good deal of matter which is quite new. Looking to the inception, continuance, and determination of the relation of landlord and tenant, it may be said that sections 63, part of 65, and 66 treat of the first; sections 64, the rest of 65, 67, 68, 69, 70, 71 of the second; and sections 72 and 73 of the third. The main subjects thus are the power of granting leases, the duty of placing and maintaining tenants in possession, the prohibition of illegal cesses, the right of survey, tenants' improvements, the effect of transfer of the landlord's interest as regards current payments, sub-letting, relinquishment, abandonment, ejectment, notice to quit and disclaimer, and, lastly, the right to the away-going crop. The points which seem to possess the greatest importance are improvements (section 69) and sub-letting (section 71).

2. The best plan will be to comment upon each section separately.

Section 63 declares that proprietors are competent to grant leases for any period, even in perpetuity, in any form and at any rent. The engagements must be specific; imposts such as *abwáb*, *mahlát*, &c., are illegal and punishable by damages; a manager or contractor must act with written authority; and grants rent-free

bind only the grantor or his heirs or persons claiming through him or them. As will be seen from article 15 of the Digest, all this is founded on Regulation or case-law. Perpetual leases are common in Bengal, the well-known *patni* tenures being usually, though not, as already mentioned, invariably perpetual.* Mr. Reynolds observes that the opening part of this section, though containing a somewhat unnecessary recital, merely reproduces the existing law. There is, in his opinion, no valid reason for altering it. Some of the remarks in the opinions would doubtless be considered by a Select Committee, but none need be noticed here.

8. *Section 64* forbids (during the currency of the tenancy, section 63 having regard to its commencement) the imposition of new and unauthorised cesses, and prohibits landlords from compelling the attendance of their tenants or enforcing payment of rent otherwise than according to law. Article 57 of the Digest shows that the existing law has been followed. I have mentioned in paragraphs 26 and 29 of my Memorandum on Behar the omission of the old provisions as to the *pattah* and *kabuliyat*, and the substitute now proposed for them. The provisions, if retained, would perhaps have been inserted in this part of the Bill. There has been much correspondence about the levy of illegal cesses, particularly in Orissa. The Commission considered (and decided in the negative) the question whether a special procedure in the Collector's Court should be prescribed to make the law against such cesses more operative. The Behar Committee also had no suggestion to make for the improvement of the present law. Mr. Barlow, Commissioner of the Bhágalpur Division, thinks that the practice of paying something to the landlord in lieu of enhancement, or to avoid measurement, should be maintained as preventing litigation. The revenue authorities, however, can uphold ancient customs under the section as drafted. The other opinions, which, for the most part, express concurrence, do not call for remark.

4. *Section 65* obliges the landlord to place and maintain the tenant in possession. It appears from article 59 of the Digest to be in accordance with the case-law. The Behar Landholders Association remarks that the section would not enable a zamindar to intervene for the protection of the ryots against dispossession by a *thikadár* holding under him. There are very few other comments.

* Rent Papers III, page 240. The *patni* tenure is defined as perpetual in reg. 8, 1819, III, 611.

Rent Papers IV, page 263.

Rent Papers III, pages 420, 481, 530, 584, 600, 621, 624, 628, 637, 695, 722, 845-2, 870, 915, 958.

Infra pages 103-5.

Rent Papers II, page 230; see also para. 3 of the Report, Rent Papers I, page 5.

Rent Papers II, page 254.

Rent Papers III, page 212.

Rent Papers III, pages 481, 508, 584, 600, 611, 624, 637, 642, 695, 916.

See Rent Papers II, page 220.

Rent Papers III, page 670.

Rent Papers III, pages 481, 508, 600, 611, 637, 695, 916.

Digest, art. 6.

Rent Papers III, page 884.

Rent Papers—I, page 63; II, page 357.
Regd Papers III, page 722.

Rent Papers III, pages 870, 894, 899, 898, 900, 910.

Digest, art. 59: see also Act VI (B.C.) of 1862, sec. 3.

Rent Papers III, pages 805, 821, 766, 869.
Rent Papers III, page 841; III, page 856.

Rent Papers III, pages 794, 869, 811, 879, 905, 916.

5. *Section 66.*—A lease may not be granted for a term exceeding the lessor's interest; but, if granted, is valid to the extent of such interest. A lease granted by a person having no interest is to be valid to the extent of any interest subsequently acquired. The first two clauses practically amount to a restatement of the proviso to section 2, Regulation XVIII of 1812, as interpreted and supplemented by the judicial decisions. The third clause, as will be apparent from the footnote at page 7 of the Digest, requires consideration. Lessor and lessee might be aware of the lessor's want of title, and the lease might be intended as a fraud on a third person. Mr. Vessey, Officiating Collector of Backergunge, notes: "I object to the last clause * * as recognising a practice which has been the cause of endless disputes and affrays, and I would substitute for it a provision to exactly the contrary effect. So far from allowing claimants to harass the actual proprietors by creating pseudo-under-tenants, I would visit the action with penal consequences; and I write advisedly, since it is only recently that in this district we were on the verge of serious disturbances consequent on attempts of this nature to bolster up a doubtful title. The matter is one which requires to be looked at from the point of view of a policeman and not of a lawyer." The clause was introduced at the suggestion of Sir Richard Garth, the Chief Justice. Mr. Nolan, of Shahabad, would empower limited owners to grant leases to actual cultivators for thirty years. The other opinions, which are favourable in the main, need not be cited.

6. *Section 67* empowers a landlord, unless restrained by contract, to make a general survey and measurement, including therein rent-free land; but this authority is subject to section 62, limiting the rights of copartners in the matter. The present law is merely extended to cover the case of rent-free lands—an extension which has been made in the Lieutenant-Governor's Bill, and was not proposed in the Draft of the Commission. It seems only reasonable that rent-free lands should be measured no less than the rest, otherwise landlords might suffer from encroachments. The amendment is supported by several opinions. Mr. Finucane, however, would not allow general measurements more frequently than once in ten years; and Mr. Anderson, of Bankura, makes the same suggestion. The section has been generally accepted.

7. *Section 68.*—Measurements in suits between landlords and tenants are to be

made according to the Government standard *bigah* of 14,400 square feet, which is to be converted into the local measure, if necessary. If there is any dispute as to the length of the standard pole of the *pargana*, it is to be determined by the Collector, with an appeal to the District Judge. The introduction of the Government *bigah* is a novelty, as the present rule is that measurements shall be made according to the *pargana* pole. Mr. Finucane considers that the section will work nothing but mischief in Behar. Ryots will not understand the measurements, and the result will be opposition met by high-handed proceedings. The Behar local *bigah* varies in different districts and parganas, but it is in all districts about double the Bengal standard *bigah*, or more. The standard at present adopted for opium in Behar is a *bigah* of 27,225 square feet. Mr. Finucane would reverse the procedure of the Bill and make the measurements by the local standard, converting that into a Government measure, if requisite. Similar views are expressed by Messrs. Nolan and Worsley, who are also Behar officials. Mr. Newbery, of Bhágalpur, would take the opportunity of establishing a standard for each geographical division of the country. Probably nothing short of the preparation of good field maps would have any appreciable effect on the disputes and frauds connected with measurements. It does not appear how either contest or opportunities for exaction would be diminished by the general use of a Government standard in a part of the country where the ryots could not comprehend it; and if, in such cases, the measurement had to be converted into some local standard, the time spent in working out the prescribed areas would seem to be thrown away. Some further opinions, most of which are favourable, are noted in the margin.

Digest, art. 98. Act VIII (B.C.) of 1869, sec. 41; Act VI (B.C.) of 1862, sec. 21.

Bihar Papers III, page 943.

Bihar Papers III, pages 722, 732.
Bihar Papers III, page 666.

Bihar Papers III, pages 584, 620, 631, 924, 966, 894, 900, 916, 928.

8. *Section 69.*—This is a very important section, and I therefore transcribe it at length:—

69. (a) A tenant is bound to use the land which he holds as tenant in a reasonable manner for the purpose for which it was let or has been customarily used. *A ryot having a right of occupancy may cultivate any kind of crop or produce he chooses, and a ryot not having a right of occupancy may cultivate any kind of crop or produce he chooses unless barred from doing so by special contract with his landlord;* but no ryot may, without the consent of his landlord, materially alter the condition of the land held by him, so as to render it permanently unfit for agricultural or horticultural purposes: provided that any ryot may without such consent make any of the

improvements hereinafter specified, subject, however, to the two following conditions:—

(1) Nothing shall be deemed to be an improvement which does not lastingly facilitate the cultivation of land, or lastingly increase the productive powers of land:

(2) *no improvement which is made without the written consent of the landlord shall be a bar to any enhancement which the landlord might otherwise have been entitled to claim.*

(3) The improvements referred to in this section are the following:—

(1) the making of tanks, wells, and other works for the storage, supply, or distribution of water for agricultural purposes:

(2) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water:

(3) the reclaiming, clearing, or enclosing of land for agricultural purposes:

(4) the renewal or restoration of any of the foregoing works, or alterations therein, or additions thereto.

It will be observed that we have here a combination of sections 77 and 79 of the Bill of the Commission, and that the words in italics have been added partly by Mr. Reynolds and partly by the Lieutenant-Governor. The Commission proposed to make the planting of fruit trees one of the improvements which tenants should be permitted to undertake without the consent of the landlord, and further provided that ryots should be entitled, any custom to the contrary notwithstanding, to cut down and appropriate trees on their holdings planted by themselves. There was, however, overwhelming testimony that the Commission had been misinformed as to the custom of the country in regard to trees. The custom, as Mr. Reynolds notes, appears to vary: sometimes the landlord is entitled to a fourth share, more frequently to a half share, and his consent is usually required for planting and cutting. In some places a distinction is drawn between self-sown trees or remnants of the old jungle and others, the former being claimed by the ryot. The provisions proposed by the Commission have been omitted, and the matter has been left to local custom and contract, as at present.

Rent Papers III, pages 440, 492, 506, 521, 580, 590, 594, 596, 602, 605, 608, 611, 614, 616, 638, 646, 672, 693, 694, 700, 723, 745, 786, 787, 842-3, 856.

Rent Papers IV, page 209.

Rent Papers III, page 686.

Supra, pages 48-9.

Bill III, sec. 69.

9. The first sentence of the section is in accordance with the case-law as stated in article 62 of the Digest, already quoted in the Note on Chapter V. The second sentence has not been discussed by any local officers, as it was introduced by the Lieutenant-Governor and does not appear in Mr. Reynolds' Bill. There can be little doubt that some check is necessary upon

the enforced cultivation of indigo in Behar; and the Lieutenant-Governor explains that he has inserted the words declaring that an occupancy ryot may cultivate any crop he chooses, on account of the oppressive proceedings of certain landlords in that part of the country. But possibly some doubt may be felt whether the avoidance of contracts would not interfere in some measure with the *khushi*, or voluntary, system described in paragraph 9 of my Memorandum on Behar. I apprehend that it is not intended to prevent occupancy ryots from binding themselves by contracts to cultivate indigo entered into in consideration of an advance with a planter exercising no proprietary authority in the village. Apparently, under the section, contracts with *the landlord* to cultivate particular crops are to be upheld as against tenants-at-will, but not as against occupancy ryots. But perhaps the section should more clearly explain that the contracts, even of occupancy ryots, with *third persons* exercising none of the powers of a landlord, are to be respected.

Rent Papers IV, page 25.

Infra, page 140.

10. The general subject of improvement is not treated in this Bill by the method which is usual in Indian Acts. In Oudh and the Punjab the plan is to declare the tenant entitled to compensation for his improvements before his rent can be enhanced or he can be evicted, and the compensation may take the form either of a money-payment or of a beneficial lease, or of both. A twenty-years' lease, if accepted, will bar the tenant's claim. In the North-Western Provinces compensation for the improvements made must be given if the tenant be ejected, and, in determining its amount, aid rendered by the landholder, whether in money, material, or labour, or in allowing the tenant to hold at a favourable rate, is taken into consideration. The Central Provinces Tenancy Bill contains some very elaborate provisions on the subject. The "absolute" or most privileged occupancy tenants, and the occupancy tenants of Chánda, Nimár, and Sambalpur, have a preferential right to make improvements; but in the case of all other tenants the landlords are presumed, until the contrary is shown, to have such right in respect to tanks, *pucka* wells, and permanent buildings. Compensation follows on ejectment, but is subject to certain exceptions, of which one is when the landlord had the preferential right to make the improvement and the tenant has made it without giving notice.

Oudh, Act XIX of 1868, secs. 25-30. Punjab, Act XXVIII of 1868, secs. 37-41. See also Bombay, Act V of 1879, secs. 61, 106, 107; Burma, Act II of 1876, secs. 13, 50; Ajmere, Reg II of 1877, sec. 59; Madras, Act II of 1864, sec. 32; Act VIII of 1865, sec. 11; Act II of 1871, sec. 1.

Act XII of 1881, secs. 34-7.

Central Provinces, Tenancy Bill, July 1880, secs. 20-24, 95.

11. The Famine Commission lays great stress on security for improvements, and

Report of the Famine Commission, Vol. II—page 112, para. 4; page 116, para. 28; page 142, para. 6 and 7; page 160, para. 9.

its advice is "that more distinct legal provision is required" to ensure "that every occupancy tenant may effect in the land he occupies material improvements of the kind contemplated in Act XXVI of 1871" (*i.e.*, of the nature described in the present section) "without requiring him to obtain the sanction of his landlord and without endangering the security of his tenure. Such a right has nowhere been authoritatively declared by the law, and decisions of the Courts have in some instances negatived, and in others questioned, its existence. Further, every tenant who is ousted by his landlord for failure to pay rent, or other causes, should obtain compensation for unexhausted improvements."

12. The Bill of the Commission proposed to give such compensation to the three-year tenants of its Chapter IV. But that chapter has been struck out; and, as the Bill now stands, occupancy tenants will practically obtain compensation, because if their holdings are sold for arrears of rent they can claim the surplus sale-proceeds under section 233, clause (4). I cannot find that ryots who do not possess a right of occupancy (Chapter IV of the present Bill) can get compensation; but if the general principle of the Bill is accepted, the mass of the tenants will have occupancy rights, and probably the *korfas* or *bhág-jotdárs*, often little, if at all, above the rank of mere day-labourers, would not, in practice, execute any improvements.

13. Certainly, to judge from the experience of my own Province, I should have expected to find a great deal of local usage on such points as clearance of the waste and the construction of wells, tanks, and drainage and irrigation works. I may mention the diversity of custom in the Punjab as to the right of tenants to sink *kacha* wells, the *málandár*, *batemár*, *latmár*, *jhuriband* and *kahnár* tenants, the *chahdárs*, *kowarkhwárs* and *chakdárs*, the customs of *adkhápi*, *amedado* and *muskhkat*, all of which are explained in my compilation on Punjab Customary Law. Some faint traces of custom are, indeed, here discernible, and I may now amplify what has been said in connection with section 4. The Landholders of Chittagong assert stoutly that it is against the custom of the country for a tenant to dig tanks or wells, except upon lands under perpetual lease, without the permission of the landlord. In Chittagong the ryots make large embankments* to shut out the

Rent Papers III, page 480. *Supra*, page 32.

Rent Papers III, page 852.

* It is well known that tidal and other embankments are a great feature in Midnapur and other coast districts. There is a quantity of statute-law on the subject, viz., Act XXXII of 1855; Bengal, Act VII of 1867; Bengal, Act VI of 1873; Bengal, Act V of 1876.

tidal overflow, provided they get permanent leases or leases for several years rent-free. Mr. MacDonnell notes that in the Sárun district a ryot may dig a well, but may not excavate a tank. If legislation is decided upon, he would maintain this distinction; but he thinks such matters are better provided for by prescription and custom than by specific rules of law. Mr. Porch, of Maldah, would recognise local custom as far as possible. The *khunlkutti* (or stump-cutting) claim in the Sonthal Parganas (to which place, however, the Bill does not extend) may be analogous to the *butemári* or *mándemári** of the Southern Punjab; but it is not fully explained. Mr. Wace, of Birbhúm, holds that to allow tenants to make tanks, wells, &c., is an innovation on existing law and custom. "In South Behar generally," says Mr. Reynolds, "and in portions of North Behar which border on the Ganges, the landlord constructs and maintains the reservoirs for storing water, the wells for irrigation, the village channels and embankments, and similar works, which are locally known by the name of *gilandazi*. His share is usually nine-sixteenths of the grain; but the whole of the straw and chaff belongs to the ryot."

Rent Papers III, page 743.

Rent Papers III, page 699.

Rent Papers III, page 699.

Rent Papers III, page 697.

Rent Papers IV, page 268.

14. I have read, in addition to the passages noted in the preceding paragraph, those cited in the margin, and I cannot say that I feel satisfied that the subject has been exhaustively examined. Lachmi Narain, a Pleader of Lucknow, advocates fixity of tenure for ryots who construct permanent works of irrigation (Rent Papers III, pages 543-7). Mr. Newbery, of Bhágalpur, is sceptical as to the existence of tenants' improvements (Rent Papers III, page 605). Mr. Stevens, writing from Burdwan, expresses doubts, but has no local information. Mr. Westmacott thinks the section will do more harm than good, and that the landlord should have the power of preventing any of the operations specified (Rent Papers III, page 916). Mr. Finucane and Mr. Nolan object to the second condition, allowing the landlord any enhancement he might otherwise have been entitled to claim if the improvement has been made without his written consent (Rent Papers III, pages 872, 941).

Rent Papers III, pages 434, 440, 493, 495, 497, 498, 512, 520, 542, 543-7, 552, 572, 580, 590, 602, 605, 646, 656, 667, 671, 701, 708, 718, 766, 806-11, 842, 845, 864, 872, 879, 895, 900, 916, 920, 941, 969, 1008.

15. It is a strong point that the British Indian Association did not challenge this section in its final manifesto. The worst

See Mr. Reynolds' remark, para. 27, Rent Papers III, page 1008.

* *i.e.*, a varying length of possession is recognised in return for jungle-clearance.

of enquiring into custom about improvements is that customs in restraint of improvement are frequently alleged. Apparently, if the landlord proceeded on the third ground of enhancement in section 23, he would not be able to raise the rent of an occupancy ryot who had made an improvement without his written consent. Men desire power as much as money; and it is possible, at least in the case of tanks, that section 69 may somewhat restrict, in some parts of the country, the authority of the zamindar. Still looking to economic principle, to the recommendations of the Famine Commission, and to the tendency of legislation in other Provinces, I apprehend that the Government will raise no objection to the rules proposed.

16. *Section 70* provides that a tenant shall not be liable to a transferree of the landlord's interest for rent paid to the former landlord without notice of the transfer. There is practically nothing to add to the Lieutenant-Governor's remarks at page 25 of Vol. IV. Mr. Reynolds proposed to omit this section as being likely to encourage frauds by collusion between the ex-landlord and the tenants, and because personal notice could not be given to each tenant. The second difficulty has been met by the present wording. Joykissen Mookerjee objects that the purchaser may be compelled to pay his revenue before he is in a position to collect his rents. The clause need not be particularly considered at the present stage of the Bill. It has been very little criticised. The Lieutenant-Governor, in restoring it, has followed Mr. Dampier's advice.

Rent Papers III, page 806.

Rent Papers III, pages 493, 521, 594, 596, 628, 629.

Rent Papers III, page 870.

17. *Section 71.*—This very important prohibition of sub-letting without the written permission of the landlord is discussed in another part of my Notes.

18. *Section 72* deals with the determination of tenancy. The opinions, with few exceptions, do not throw very much light upon the points raised; and it will be convenient to consider the section (1) with article 12 of the Digest and Sir Richard Garth's comments thereon, and (2) with the provisions in Acts applicable to other Provinces.

Rent Papers III, pages 840, 483, 506, 542, 593, 594, 596, 611, 626, 646, 656-7, 667, 678, 722, 766, 767, 844, 870, 884, 895, 900, 917, 925, 959, 960, 1007.

Rent Papers II, pages 358-9.

19. The first and second cases when a lease expires, or the limited interest of the landlord comes to an end, call for no remark. The third case, relinquishment of land by a ryot after notice, merely re-enacts the existing law. The fourth case, abandonment, gave rise to a good deal of discussion. The Commission proposed that the tenancy should not be determined till the tenant, having ceased to cultivate the

land or pay rent therefor, had been absent from the neighbourhood for a year. It was objected, with much force, that the landlord might in consequence lose a year's rental, as his land might be unoccupied for the twelve months. Mr. Reynolds proposed that abandonment should be assumed as soon as the tenant had absented himself. Mr. Dampier thought this rule dangerous to the ryot, whilst the first proposal was hard on the zamindar. The Lieutenant-Governor, concurring in this view, has provided that the tenancy may cease, at the option of the landlord, when the absent tenant fails to pay up his instalment of rent within fifteen days of due date. But if no rent was due, or the rent due was tendered and refused, the tenant may sue within six months for recovery of possession and damages. Sir Richard Garth's opinion is that if a ryot chooses to abandon his holding and leave the land uncultivated, the landlord should be able, at his option, either to treat the tenancy as at an end, or to hold the ryot to his obligations and sue him for the rent. The fifth case is that of the ejectment of a ryot from a non-transferable holding for non-payment of rent. Under the present law no ryot, having a right of occupancy or holding under a *pattah* the term of which has not expired, can be ejected otherwise than in execution of a decree or order. The Bill goes further, and says that no ryot (of any class) shall be ejected otherwise than in execution of a decree or order of a Civil Court. Notices to quit may indeed be served on ryots not having a right of occupancy, or on tenants, for a term holding over after its expiry; and no exception will be taken to the maintenance of the existing rule, that the institution of a suit for ejectment is not equivalent to a reasonable notice, because it is of the essence of a reasonable notice that it should be served at a proper time in the agricultural year, as provided in section 27. But the effect of the notice is not to throw upon the ryot the burden of contesting it, but merely to entitle the landlord to sue for ejectment, and for the recovery of the letting value of the land during such time as he may be kept out of possession. This differs very materially from rules elsewhere in force. Thus in the North-Western Provinces the tenant must make an application contesting his liability to ejectment within 30 days, and, failing such application, the tenancy will cease. In Oudh, if the tenant does not institute a suit to contest his liability to be ejected on or before the 15th May

Rent Papers III, page 909.

Bill III, sec. 28.

Act XII of 1881, secs. 20, 45.

Act XIX of 1868, secs. 58, 42-5.

Act XXVIII of 1859, secs. 21-3.

Madras, Act VIII of 1865, secs. 10, 12, 42-4.

Central Provinces Tenancy Bill, 31st July 1880, secs. 56-62.

See supra, page 143.

next after the service of the notice, he must vacate the land. There is a similar rule in the Punjab; but in both Provinces no tenant (except a sub-lessor in Oudh) can be ejected between certain fixed dates, unless, while his rent is in arrear, he has failed to cultivate the land in accordance with the terms on which he holds it. In Madras, when any tenant is in arrear at the end of the revenue year, and when there is no sufficient distress upon the premises to satisfy the same, and when the tenant has no saleable interest in the land, the landholder may apply to the Collector for a warrant authorising him to take possession, and upon delivery of possession the tenancy ceases, unless an action be brought to reverse the proceeding within one month. The Central Provinces Bill makes a nearer approach to what is proposed in Bengal. There is the notice to quit which may be disputed within one month from date of service; but certain ordinary tenants may apply for an order of protection from ejectment, and in no case can the tenant be ousted till the Court has recorded a proceeding declaratory of the landlord's right to eject. It may be said that it is a general principle that agricultural tenants shall be ejected only at a proper time of year; but that, whilst in the law of other Provinces the onus lies upon unprivileged tenants to establish their claim to continued occupation, in the Bengal Bill the burden of proof is shifted and thrown on the landlord.

20. The sixth case, where a farmer or other lease-holder not having a permanent or transferable interest in the land is ejected for non-payment of rent by decree or order of the Civil Court, needs no comment. The ninth case is a necessary consequence of the law, which permits the avoidance of leases or determination of tenancies at the option of the purchaser on a sale for arrears of revenue or rent. It will doubtless be thought right that such option should be exercised within one year, as provided in No. 10 of Schedule III of the Bill.

21. The principle in the eighth case, that disclaimer of the landlord's title shall, under certain circumstances, work a forfeiture of the tenancy, is one which would, I think I need not hesitate to say, do much harm in parts of India where the tenant and the peasant proprietor are men of the same class, working in neighbouring fields, and deriving their several claims from a common village history. There are many tenants in the Punjab

who may be said to be almost members by adoption of the village community; and when such men set up a proprietary title, they may well be excused if they take a biassed view on a difficult question of right. In Bengal some doubts are expressed. Mr. A. Smith, Commissioner of Orissa, notes that where there are so many *hendsi* transactions, the Courts will require to apply this provision with great care. Mr. Nolan represents that it is often far from clear what particular persons stand in the relation of landlord and tenant; that ryots should not be punished for mere mistakes; that a landlord does not forfeit his interest because he denies his tenant's right; and that the rule seems to be connected with the feudal origin of English land tenures, a vassal committing a kind of treason by denying the right of his lord. I have not found any such rule in the Rent-laws of other Provinces; and Mr. Field believes that in Bengal it rests wholly upon case-law. "Having regard," he says, "to the circumstances of this country, I think mere words spoken, or the claim by a tenant of a greater interest than he is entitled to, ought not to work a forfeiture; but I do think that when a tenant, in answer to a claim for rent or to avoid legitimate enhancement, deliberately in Court denies the title of his real landlord and pretends to hold under a rival zamindar, or, by way of making evidence in anticipation, executes a registered *kabuliyat* in favour of such rival zamindar, forfeiture of his right of occupancy, or whatever other right he possesses, is a reasonable and proper retribution. That such *mala fides* is too common—the *ziaba* system in Backergunge is a notorious instance,—the experienced are aware, and I know no more effectual way of striking a blow at an evil generally complained of than by enacting a reasonable rule as to forfeiture by disclaimer. This rule should of course provide for waiver of the forfeiture by distraint for, or receipt of, rent accruing after the forfeiture, or by other conduct on the part of the landlord showing that, being aware of the disclaimer, he had elected to waive it."

Rent Papers III, page 676; see also Mr. J. B. Stevens, Officiating District Judge of Sárun, Rent Papers III, page 709.

Rent Papers III, page 772.

Digest, page 17, rule 7.

In these views Sir Richard Garth quite agrees. The *ziaba*, or *ziaba* practice is referred to in the papers. The Backergunge Landholders complain of it as causing endless feuds and affrays. Mr. Cochran, Officiating Judge of Cuttack, describes *zimbadári* as the pernicious custom (common in Mymensingh and Backergunge) of a ryot of one landlord selling his holding to another landlord. Sir Ashley Eden has

Rent Papers III, page 235.

Rent Papers III, page 862.

guarded the proposal of the Commission by requiring the landlord to bring a suit before the forfeiture can be enforced. If any further precaution be needed, perhaps the operation of the clause might be regulated by *Gazette* order, so that it should only apply in those districts where the evil struck at is rife.

22. *Section 73* gives an ejected ryot the away-going crop, with leave to enter on the land to remove it, subject to a reasonable rent. The landlord may elect to purchase the crop at a valuation to be made by the Court in case of dispute. There has hitherto been no rule of law on this subject in Bengal; and the Commission, whose proposals are accepted by the Lieutenant-Governor without change, followed generally section 42 of the North-Western Provinces Act, XII of 1881, and section 46 of the Oudh Act, XIX of 1868. The provision in the Punjab (Act XXVIII of 1868, section 27) is the same as in Oudh. In the Central Provinces Bill (section 32) the principle is identical; but there, as in the Punjab and Oudh Acts, the tenant loses his claim if the landlord gives him notice at the proper date and the crop has been put down thereafter; and further, the Central Provinces Bill saves local usage or special agreement. Although there are some dissentients, the great preponderance of opinion is in favour of the section.

Digest, page 83, note.
Some opinions, however, note that the section is against the rulings of the High Court.
Rent Papers III, pages 682, 648, 723.
Rent Papers II, page 221.

Rent Papers III, pages 582, 613, 591, 542, 594, 593, 602, 617, 626, 646, 650, 667, 676, 701, 709, 722, 705, 841, 879, 903, 917, 920, 927, 930.

CHAPTER XI.—OF SPECIAL PROVISIONS FOR BEHAR.

1. There is an abstract* of this chapter in paragraphs 21 to 24, inclusive, of my Memorandum on the Rent Question in Behar; and I have collected the principal references on the general subject in a footnote to paragraph 12 of my Preliminary Note.† I may here repeat that the Lieutenant-Governor's support of this portion of the Bill is merely provisional. Amongst the further criticisms which are to be expected is an address from the Behar Landholders Association. The British Indian Association has abstained from comment. Possibly the information sought from the Government of the North-Western Provinces, in accordance with the suggestion made in the Memorandum above mentioned (paragraph 38), will prove suggestive and useful. At this date‡ there would be no advantage in taking up the proposed sections in any detail. I shall therefore confine myself to a few remarks in continuation of the Notes by Messrs. Reynolds (Rent Papers IV, pages 375-91) and Edgar (Rent Papers III, pages 747-58). Mr. Reynolds' Notes were written in December last, and his principal proposals were made after a conference at Bankipur, in which Messrs. Halliday, Edgar, Metcalfe, Finucane, and Gibbon took part. Mr. Edgar writes in January 1881, and comments upon what is said by Mr. Reynolds. The chief questions are—*enhancement*, the *occupancy right*, and *commutation*; and in connection with these I shall bring forward the observations in the opinions which seem to me to deserve most attention, and shall include some points relating to produce-rents and appraisements. I take this course because there is really very little criticism of the proposals immediately before the Government. Except as regards the award in produce and appraisement cases, the deposit of the appraisement papers, and the commutation clause (Bill III, sections 88-90), the special recommendations of the Commission have been superseded by the proceedings at Bankipur. Amongst the selected officers consulted on Mr. Reynolds' Draft, only five (Messrs Worsley, Nolan, MacDonnell, Halliday, and Finucane) write from Behar.

* *Infra*, pages 113-3.

† For reasons about to be stated, there is not much important matter specially directed to this chapter in the earlier opinions (Rent Papers III, pages 417-685). The following, however, is a list of the pages where it is more or less discussed or mentioned:—Rent Papers III, pages 448-50, 460, 507, 513, 521-2, 527-8, 590, 594, 599, 602, 608, 611, 613, 620, 647, 657, 661, 667, 670, 694, 701, 708, 711, 722, 728, 732, 742-3, 766-7, 847-8, 870, 872, 879, 881, 893, 903, 917, 920, 942, 947, 960, 1003, 1008.

Rent Papers IV, page 20.

Rent Papers III, page 1001.

Infra, page 130.

‡ 18th November 1881.

Rent Papers IV, page 382.

I.—Enhancement.

2. Mr. Edgar fully agrees with every word in Mr. Reynolds' Note of 11th December 1880. If may be accepted, then, that

Rent Papers III, page 731.
Rent Papers IV, pages 375-8.

the Patna Division is rack-rented; that rents are enhanced at the mere will and pleasure of the landlord; and that ryots are hardly ever evicted in Behar, because the new tenant could not possibly pay more than the old one. "The present scale of rents," we are told, "leaves no *margin* whatever." "I believe," says Mr. Edgar, "that these rates amount in many cases not merely to a rack-rent, but to a rent which can only be fully paid in prosperous years. This is the secret of the tremendous arrears on almost every estate in Behar, and of the bad collections of the Wards Department. The *jumabandis* show impossible rents." I have already referred to Behar as a part of the country where the rent or revenue conditions of the last century may have to a great extent survived. At page 259 of the second Volume of the Rent Papers a quotation is made from Sir John Shore's Minute of 18th June 1789, and it is said that he describes the condition of the ryots in words which, with slight modifications, might not inaptly be applied to the state of things existing in Behar up to the present day. Mr. Finucane, however (Rent Papers III, page 336), argues that the population of Behar is much worse off now than it was ninety years ago. Taking as the theory of rent in Bengal that it is the State share of the produce in money or kind made over to the zamindars for an annual payment fixed in perpetuity, we may compare the Patna Division to a tract released for a light quit-rent in perpetual *jágir*. If this were the fact and not an analogy, and if the evils which these papers disclose were reported to us, we should say at once that this Division is grievously over-assessed; and further (unless there were some very early prospect of a great change for the better), we should acknowledge that immediate relief must be given, by the reduction of the excessive assessment, at any cost and at any sacrifice and at any resulting loss to the *jágirdárs*. *No one has made any such proposal*; but the burdens borne by the unfortunate ryots are equally onerous whether termed, in technical language, a revenue or a rental. The distinction between a permanently-settled province and a perpetual *jágir* may be an impediment to our action; but it does not make the slightest difference to the cultivators, who are labouring under the weight of a crushing impost.

Preliminary Note, para. 28, *supra*, page 17.

3. The wisest course, in Mr. Edgar's opinion, would be to prohibit all enhancement on any ground or in any way whatever

for the next thirty years. The rise in price, he thinks, would in a few years render the present rates fair. Mr. Finucane also would stop all further enhancements of rent for a generation; and he anticipates that this proposal will be regarded as extreme. It does not exceed, it does not even go as far as, the proposal of the Famine Commission, which is that the rents of occupancy tenants shall be periodically fixed by a public officer, and that in Bengal a revision of rents shall not take place oftener than every thirty years. The Bengal Government, though it refers to this suggestion, does not discuss it. The question of a sub-settlement either in Behar or elsewhere has not yet been faced.

Rent Papers III, page 930.

Report of the Famine Commission, Vol. II. page 110, para. 26.

4. Failing the measure which Mr. Finucane fears may be thought extreme, and which Mr. Edgar does not venture formally to recommend, the latter would prevent enhancement by *thikadars*, and would adopt the proposal of the Rent Commission that no enhancement shall be allowed in excess of one-fourth of the average value of the gross produce. Here Mr. Reynolds and the Lieutenant-Governor agree with Mr. Edgar. Under the Bill (section 84) enhancements (except on the ground of alluvion) are permitted only to persons who have a permanent transferable interest or an interest not less than life interest. Lease-holders and farmers may not collect arrears which became due before the date on which the lease or farm took effect; nor (except, as before, on the ground of alluvion) may they collect rent in excess of the amount annually payable in the two preceding years. These provisions are obviously necessary if the principle of prohibiting enhancement by *thikadars* is accepted. If a lease be taken of an estate in arrears with "impossible rents," the effect is the same as if enhancement were permitted. The *thikadar* may not enhance either through the Court or by the consent of the ryots. "It may fairly be regarded," says Mr. Reynolds, "as an open question in Bengal whether the ryot shall be allowed to contract himself out of the provisions of the Bill; but there is not room for two opinions upon the point in Behar."

Bill III, secs. 85-7.

Rent Papers III, page 378.

5. Mr. Finucane remarks that Mr. Reynolds did not notice one of the most important limitations on enhancement unanimously recommended by the Behar Committee. This is that the rates paid by occupancy ryots when once fixed shall not be enhanced, except (*a*) by decree of Court, or (*b*) by written agreement

Rent Papers III, page 942.

Rent Papers II, page 284.

registered under the Registration Act. It appears that unsuccessful attempts are made to enforce enhanced rates by suit; existing rates are upheld by the Court, but nevertheless the enhanced rates are entered in the rent-rolls. After a few years a suit is again brought with the allegation that, subsequently to the decree, the ryots agreed to the enhancement, and this process is repeated till the unfortunate cultivators yield. It is clear that such malpractices would be checked by the plan proposed by the Behar Committee; and, for convenience, any number of ryots might signify their assent in one registered document. It is already a custom where ryots *bond fide* assent to an amicable enhancement to have a *sharanama*, or deed, executed specifying the enhanced rates. Mr. Edgar would not allow even landlords (as distinguished from *thikadars*) to enhance, except under an order of Court, or with the duly registered consent in writing of *every* ryot in the land affected, by the enhancement. Mr. Nolan, also, would introduce the principle that a rent-rate once fixed by written agreement, or by public authority, or recorded in the road-cess returns, shall not be enhanced otherwise than after the consent of the ryot has been recorded in a public register. "I have been struck," he observes, "in the course of my service in the different districts in Bengal, Behar, and Orissa by the uniformity of the disputes which everywhere more or less prevail between landlords and tenants. In all, the evidence is of the same type,—on the one side are produced the zamindari accounts, showing, if they are trusted, that the ryots have in fact given their consent by paying at the enhanced rate; on the other, are put forward verbal denials and criticisms of the accounts. In some cases the accounts have been proved to have been elaborate forgeries." Clause (*b*) of section 49 of Bill III, which declares that receipts left incomplete by the landlord shall be deemed to be acquittances in full, may do something to check false allegations of assent to enhancement; but, with this exception, the Bill contains no provisions such as the Behar officers mentioned in this paragraph suggest. The law now in force in the North-Western Provinces (Act XII of 1881, section 12) prescribes that the rent paid by ex-proprietary or occupancy tenants shall not be liable to enhancement, except (*a*) by a written agreement registered or recorded before the *kánungo*, or (*b*) by order of a settlement officer, or (*c*) by order under the Act.

Rent Papers III, page 732.

Rent Papers III, page 724.

Possibly the Bengal Government thinks that section 23 of its Bill should suffice. I have already noticed that Mr. Reynolds, Mr. Edgar, and some other officers consider that there should be separate legislation for Behar.

Footnote to para. 19 of Preliminary Note. Mr. Worsley, Rent Papers III, page 722. Mr. Westmacott, Rent Papers III, page 917.

II.—The Occupancy Right.

6. It is important to remark that the proposal in the Bill is *not* the proposal in the Notes of Messrs. Reynolds and Edgar. The idea of demarcating the *zerát* is accepted; but one great object with which that demarcation was proposed would not be directly attained by the operation of section 19 of the Bill. Combining what is said by Messrs. Reynolds and Edgar, I find that the feeling was that all lands should be distinguished broadly into three classes—*viz.*, (1) *zerát*, or the demesne or private lands of the zamindars; (2) *ryoti* lands, or the ordinary arable and pasture lands of the village; and (3) *common lands*, such as hills, forests, wastes, and riverside tracts, which might be further subdivided according as they were or were not recognised as appertaining to particular villages. The great principle then asserted was that *all ryots holding or cultivating ryoti lands should be conclusively presumed to have a right of occupancy therein*; and any further conversion of *ryoti* into *zerát* land would be absolutely prohibited. This, indeed, has been done by section 82; but section 19 is far from declaring that all *ryoti* lands are subject to a right of occupancy. It seeks the extension of the occupancy right by the less pronounced method of annexing it to the status of the settled ryot; it does not engraft it upon particular lands. Mr. Edgar, it will be observed, would give the occupancy right to the *actual cultivator* of *ryoti* lands, subject to certain exceptions, as where sub-letting or other temporary alienation might be permitted in the case of minors, absentees on pilgrimage or in the tea districts, and the like. It was admitted that no rights of occupancy should be acquired in *zerát* lands; and the Bill (section 83) provides accordingly, saving at the same time rights already acquired in such lands under the existing law. *Common lands* have no place in the Bill. Messrs. Edgar and Reynolds were agreed that in such lands (other than those belonging to villages, as to which Mr. Edgar had not satisfied himself) the right of occupancy might be acquired, but should not be presumed to exist.

Rent Papers III, page 781.

7. It is the interest of the planters that the occupancy right should prevail generally in Behar, and should be freely transferable. The more independent the ryots become, the less will be the need to purchase the co-operation of the zamindars by a share in the profits of indigo cultivation. In proportion as the position of the cultivators is more assured, the planters will have less difficulty in following the liberal and proper courses which their Association commends for their adoption. The Association itself asserts that the present custom of the country makes the right of occupancy heritable and transferable by sale or sub-lease, and it would confirm this custom by law. Mr. Reynolds would debar the acquisition of occupancy rights by planters. Mr. Edgar disagrees. It is not easy to foresee the practical effects of Bill III, section 19, clause (3), and section 21, clause (6); but the Lieutenant-Governor's intention is, that the existence of the occupancy right shall not be recognised in the case of persons who do not come under the definition of ryots as given in the Bill; and the planters, apparently, could not purchase occupancy holdings as such, except with the written consent of the landlords.

Rent Papers III, page 227.

Rent Paper IV, page 283.
Rent Papers III, page 751.

Rent Papers IV, page 20.

8. This point will doubtless be further considered as the Bill advances to a later stage. If the village lands remained perpetually *ryoti* lands, subject to a right of occupancy in the actual cultivator, the purchase by a planter of an occupancy holding would not reduce the numbers of the substantial peasantry: it would merely place the purchaser in the position of a zamindar. Another question which will hereafter need examination is the inheritance of occupancy holdings in connexion with the *Mitákshara* law; and I invite attention to the observation of Mr. MacDonnell, that there is nothing in the habits or mode of thought of the people round him to make him regard the proposal to declare the right of occupancy *devisable by will* as other than an unnecessary innovation.

Rent Papers IV, page 284.
Rent Papers III, page 793.

Rent Papers III, page 728.

III.—Produce-Rents, Appraisement, and Commutation.

9. Coming now to sections 88 to 92, *section* 88 (which is identical with section 43 of Act XII of 1881, The North-Western Provinces Rent Act) provides that when rent is payable in kind, or in the money-value of a portion of the crop, the landlord or tenant may, in case of dispute, petition the Collector to depute an officer in whose presence the division, estimate, or appraisement of the produce is to be made

with the help of village assessors. This is in accordance with the advice of the Behar Committee. The Rent Commission gave an appeal to the Civil Court; but this was objected to as depriving the system of much of its benefit and leaving the ryot at the mercy of the zamindar. Views differed somewhat as to details, the chief difficulty being the administrative one of insufficiency of establishment; but I think no one except Mr. MacDonnell questioned the principle of some sort of intervention in such disputes. The Commission had omitted the village assessors, whose aid will lighten the work. Procedure, more or less resembling that of the Bill, is prescribed in the Punjab and Oudh. The Central Provinces Bill, following the Ajmere Regulation and the Punjab and Oudh Acts, allows the division or estimate to be rectified by a civil suit; but there is much force in Mr. Reynolds' remark, that cases of the kind should be promptly and finally settled, even at the risk of an occasional mistake.

Rent Papers II. pages 254-5, 275-7.
Bill I, sec. 84 (b).
Mr. Barlow, Rent Papers III. page 512.
Mr. Dowdy, Rent Papers III. page 590.
Mr. Reynolds' Note, Rent Papers IV, pages 986-9.
Mr. Wesley, Rent Papers III, pages 722, 870.
Mr. MacDonnell, Rent Papers III, page 742.

10. *Section 89*, requiring the appraisement papers to be deposited in the Collector's office within fifteen days of the appraisement, has been generally approved.

Punjab Act XXVIII of 1868, secs. 17, 18, 42.
Oudh Act XIX of 1868, secs. 30, 31.
See also Bombay Khoti Act, 1 of 1880, sec. 13; and Ajmere Land Regulation, secs. 40, 51.

Rent Papers IV, page 989.

11. *Section 90.*—The commutation clause occasioned much discussion (1) as to the principle of discouraging produce-rents; (2) as to whether both landlord and tenant should have the right to commute; and (3) as to the terms of the commutation. The Rent Commission proposed to enact that produce-rents should never exceed half the gross crop. A majority (Mr. Dampier dissenting) gave the option of commutation to the landlord as well as to the tenant; and it was declared that the annual money rent should be fixed according to the prevailing money rent payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity, or, if no such prevailing rate obtained in the vicinity, then according to the average value of the landlord's share of the actual gross produce for the preceding five years, a reasonable deduction being made therefrom in consideration of the whole risk of cultivation being taken by the ryot. It is clear that the Commission did not sufficiently advert to the local custom of *gitaudari*, whereby the zamindar maintains the irrigation works. The Report (in a passage* to which Mr. Dampier was unable to subscribe) erroneously observes that the

Bill I, sec. 89.

Report, para. 146.

* Referred to *supra*, page 32.

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Rent Papers III, pages 447, 495, 512, 7-10, Rent Papers IV, pages 262-6

Rent Papers III, page 872.

Rent Papers III, page 742.

Rent Papers IV, page 267.
See also Mr. Porch, of Maldah, Rent Papers III, page 900

Rent Papers III, pages 708-9.
Rent Papers III, pages 732-9.

Rent Papers III, page 712.
See also the Munsif of Kotalpur, Rent Papers III, page 929.

Rent Papers III, page 732.

Rent Papers III, page 900.

Behar ryot gets nothing but the land land. The special half produce rule for Behar has been struck out; and the general rule on the same point (section 22) will only apply where the ryot does not receive seed or labour or *other assistance* from his landlord in raising the crop. Keeping the *gilandazi* system fully in view, Messrs. Nolan, MacDonnell, and Reynolds are decidedly of opinion that produce-rents are an economic evil. Admitting that there are exceptional cases in which *bhauli* holdings are cultivated on a reasonable principle at places where there is a great risk of failure of crops or where the zamindars supply water by channels, Mr. Nolan holds that, in the great majority of cases, *bhauli* tenures constitute an abuse which should be suppressed; the land is badly cultivated, because the ryot can get but half its fruits; the crop stands, pending the disputes, till it is over-ripe; and the practices as to its division are demoralising. The uses of the *bhauli* system are, in Mr. MacDonnell's opinion, "mere makeshifts and the liking of people in South Behar; for it is the liking for laziness engendered by a lazy system of cultivation." "There is no incentive," he thinks, "to exertion, save the immoral incentive of being able to defraud the landlord of a portion of his share." "Few things," writes Mr. Reynolds, "can be worse than a system which, while it supplies little stimulus to exertion, removes the penalties of improvidence, and allows the mass of the people to 'rub on' in a degraded condition, from which they have neither the power nor the will to raise themselves. Nothing could be better adapted to perpetuate pauperism and to destroy the growth of habits of foresight, economy, and independence." On the other side, it is argued by Messrs. Metcalfe and Edgar that, where *gilandazi* prevails, the realisation of rents in kind is the best security for the maintenance of the reservoirs and embankments on which the cultivation depends. Mr. Kemble, Collector of Gaya, considers that, in backward districts like his own, the *bhauli* system is the best. The zamindar, if he could get fixed money rents, would do nothing to maintain the irrigation works in order. Messrs. Edgar and Halliday have had long and close experience of the *bhauli* system of holding as it prevails in Gaya and South Shahabad, where it is the main tenure; and the latter points to the dilemma of the landlord, who, when commutation was effected, say, in part of his estate, could not prevent the ryots, and especially

strong ryots, such as Brahmans, Babhans, Rajputs, and Muhammadans, from taking the benefit of the irrigation works, which he would still be obliged to keep up. To such arguments Mr. MacDonnell replies that zamindars in receipt of cash rents are often bound, as in some parts of Saran, to maintain the embankments. Mr. Edgar, though regarding the question of principle differently, accepts Mr. Reynolds' practical conclusions, on the basis of which the Bill is framed. There is a general concurrence of opinion that it would be dangerous to empower the landlord to commute against the will of the tenant. Accordingly the landlord has been omitted from the section, and the right to claim commutation is that of the occupancy ryot exclusively. In the landlord's interest it is provided that the ryot must apply in respect to the whole of his holding. Mr. Halliday thinks that this proviso will make the section a dead letter. But it would obviously be unfair to permit the ryot to pick out the fields where the yield would always be assured.

Rent Papers III, page 743.

Rent Papers III, page 900.

12. In the Central Provinces Bill it is proposed to allow either the landlord or the occupancy tenant to apply for commutation of produce-rent or appraised rents to a settlement officer when a settlement is in progress, or to an officer specially empowered in this behalf at other times. In Oudh the settlement officer may commute at his discretion; and this power may be exercised, by the direction of the Local Government, in districts not under settlement. In the Punjab no commutation can take place without the consent both of the landlord and the tenant. In Ajmere the rule is the same as in the Punjab, with the proviso that in case of dispute between an ex-proprietary tenant and his landlord the Collector may commute the rent payable in kind by such tenant into a rent payable in money. In the North-Western Provinces settlement officers may commute varying rents into fixed money payments, on the application either of the landholder or of the occupancy or ex-proprietary tenant. Both there and according to the Central Provinces Bill, the Local Government on the report of the settlement officer could, in contested cases, authorise him to refuse commutation. In the North-West the Local Government further has power to make rules for the guidance of settlement officers in fixing the rent. It seems rather a one-sided arrangement to allow the ryot to commute

Central Provinces Bill, sec. 94.

Act XIX of 1868, secs. 29-9.

Act XXVIII of 1868, sec. 16.

Ajmere, Regulation II of 1877, sec. 48.

Act XIX of 1873, secs. 73-4, as amended by Act VIII of 1879, sec. 9.

Act XIX of 1873, sec. 237 (5).

See Behar Landholders, Rent Papers III, page 448; and Mr. A. Smith, Commissioner of Orissa, Rent Papers III, page 670.

and not the zamindar. Perhaps the power reserved to the Local Government by the North-West Act and the Central Provinces Bill would sufficiently guard the tenant.

13. Possibly, too, if it is necessary to lay down any express rules as to the terms of the commutation, these might be framed executively or pursuant to a power under the Act. It is strongly contended that to take the average value of the landlord's share as the basis would be ruinous to the ryot, even with a deduction for risk, and that the only safe standard is the prevailing money rate. Looking to the maximum enhanced rent of one-fourth of the gross produce prescribed in section 24 (*c*), Mr. MacDonnell thinks that the Gaya ryots,—the poorest in Behar,—would never get their rents fixed at a rate lower than the highest rate which a landlord could obtain in other districts. The Bill allows the Court, at its discretion, to take either the money rates or a share of the crop as a guide, and declares that the deduction for risk shall never be less than 25 per cent. or more than 50 per cent. of the average value of the landlord's share, and shall ordinarily be 33 per cent. It is submitted that the matter might with advantage be left more open. If the ryot would be crushed by having to pay anything near the average value of the landlord's share, which is usually nine-sixteenths of the gross produce, it must be remembered that prevailing money rents *on lands where there is no gilandazi* might be an unfair standard for the zamindar. If the landlord had effected no improvement, his rent would not include the interest on capital; and if it was equal to a *gilandazi* rent, it would probably be so because it was a rack-rent, which the Court could hardly recognise as a proper measure in fixing a fair rent. It seems, at least, probable that one reason why the *bhauli* rates are so high is, that they include (as we should say in Upper India) both a rent and a water rate. The landlord must have some return for his expenditure on irrigation works; and if he were allowed merely the money rates, which would be fair upon lands where no such works existed, he could not, as a mere matter of business, afford to keep up the works.*

14. Mr. MacDonnell describes the *bhauli* system as a partnership and not a rent system at all. If it is in fact a kind of copartnership, *section 91* introduces an important change; for it declares that the possession of the growing crop is vested in the tenant, and forbids the landlord to

Mr. Nolan, Rent Papers III, page 725.
Mr. MacDonnell, Rent Papers III, page 746.

See also Babu Surji Narain Singh, Rent Papers III, page 822.

Supra, page 86.

*A point raised by Babu Surji Narain Singh (Rent Papers III, page 822) and Mr. Barlow, Commissioner of Bhagalpur (Rent Papers III, page 813) as to the maintenance of "fixed rates" is provided for in Explanation I of this section.

Rent Papers III, page 746.

interfere with its harvesting. Mr. Halliday thinks this section will, where the tenants belong to the higher castes, drive landlords to fraud or criminal trespass, and that the latter will not be able to collect their rents, except with the help of the authorities. Mr. Reynolds says that the nominal equality which exists between the two parties really works the greatest injustice, for the zamindar can afford to wait till the ryot gives in.

Rent Papers III. page 303.

Rent Papers IV. page 306.

15. *Section 92* enacts that the commutation clause and the above rule against coparcenership do not apply to *zerát* lands, for the reason that it may be fairly argued that the zamindar is a coparcener on such lands when held on a produce rent. Mr. Finucane is of opinion either that section 91 should be applicable to *zerát* lands if sub-let, or that it should be distinctly stated that the provisions of section 88 for the decision of disputes as to division or appraisement of the crop apply to lands in this category. There is, however, an obvious advantage in marking off what I have already termed the demesne lands as the field where the zamindar might freely exercise his accustomed authority. If the mass of the tenants were secured in their village lands at easy rents, the zamindar would probably have to offer fair terms for the cultivation of his private possessions.

16. There is one other point, not indeed immediately connected with the scheme of the Bill, but most essential to its success, which should be mentioned before leaving the subject of the special provisions for Behar. Weak administration will emasculate the best laws ever framed. I have had occasion to read for the first time the papers of 1868 and 1877 relating to the indigo question in this part of Bengal. I should be, I hope, the last person to make any unwarranted charge against my fellow-countrymen in India. I think the evils which those papers reveal are due to a variety of causes, amongst which are a vicious system of tenure, the ignorance and weakness of a dense population, want of vigour or means in administering the law, and, lastly, the conflict of different standards of morality. European ideas of property and contracts may lead men, in this country, to deal with land in a manner which the Native cultivator would regard as oppressive. Without casting any aspersion upon a body of honourable men, I wish to say that the position of the indigo ryots, at least that position as it existed several years ago

before the Planters Association was formed, reminds me of the position of the Indian coolies in Réunion,—an island where the state of the Indian labourers is so unsatisfactory, that the suspension of the emigration has been seriously contemplated for some time. Doubtless the temptation is often resisted; but as yet it has been the interest of the two strongest sets of men in Behar, of the zamindars and the planters, to grind the ryot down. Mr. Edgar, a well known, experienced, and distinguished officer, with no motives to make capital out of any sensational cry, writes, speaking of the evils of the *thikbándárí* system: "They have been described over and over again during the last ten years. I can only say that the result of my experience of Behar is a conviction that the descriptions have, if anything, been under-coloured."

Rent Papers III, page 714.

He shows how the authority of the police, almost without any consciousness of the true character of the system, has been utilised on the landlord's side. He quotes recent instances of illegality or hardship; and, acknowledging that officers like Messrs. Worsley and MacDonnell have, within the last few years, done much in some Behar districts, to remedy the evils which he notices, he adds that in other districts those evils are still unchecked. It is now understood that the Behar district officers are to be picked men; but the best generals are powerless without an adequate staff. Mr. Worsley thinks that nothing is more needed in Behar than the appointment of functionaries resembling the *tahsildárs* of the North-West. Mr. Edgar holds that there are defects in the composition of the police and the subordinate criminal establishments in Behar which hamper the action of even the ablest and most energetic district officers. If further evidence is required as to the need for strengthening district administration in that part of the country, it will be found in the papers mentioned below.*

Rent Papers III, page 748.

Rent Papers II, page 310.

Indigo cultivation is not by any means the only method or opportunity of oppression in

* *Bengal, Agriculture and Commerce Proceedings*, December 1877, Nos. 1-44, contain a quantity of detailed information and of specific instances and show criminal charges arising out of the indigo system. In Bengal letter No. 3097, dated the 23rd August 1877, it is said (para. 19): "I am to forward the papers of certain indigo cases which have during the last three months been brought to the Lieutenant-Governor's notice, and which illustrate the special vices of the existing system. The earliest illustrate the absolutely arbitrary and illegal way in which planters consider themselves entitled to dispossess ryots of their land. One of these cases led to an attempt on the part of the ryot to commit suicide; in the other, to his actually committing it. In neither case did the ryot see any hope of redress or think of applying to the Courts; and though both cases were judicially investigated, yet in neither was any

Behar: but it is in connection with indigo cultivation that the wrongs which cry out for a remedy are most conspicuous.

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punishment inflicted on the factory people." See also Mr. Bennet Barlow's letter No. 810E., dated the 3rd March 1877, pages 79-9; Bengal Government letter No. 889, dated the 20th March 1877, para. 6, page 134; Mr. Bailey, Ex-Collector, dated the 11th April 1877, pages 111-12; Bengal Government letter No. 3219, dated the 9th July 1877, para. 4, page 134; Bengal Government letter No. 3277, dated the 2nd July 1877, pages 139-40; Bengal Government letter No. 3267, dated the 19th May 1877, para. 8, page 104. *Revenue, Agriculture and Commerce Proceedings*, October 1876, Nos. 1-4, where Bengal Government letter No. 2031, dated the 6th October 1876, says: "The existing laws, if well administered, seem to be sufficient for doing all that could be done by Government with advantage." *Revenue, Agriculture and Commerce Proceedings*, January 1874, Nos. 9-10A, where Bengal Government letter No. 2750, dated the 5th August 1873, says: "The Lieutenant-Governor" (Sir George Campbell) "considers that it is shown beyond doubt that, on the one hand, the want of a definitive and record-of-rights is fatal and the unsatisfactory character of the Civil Courts by which alone those rights can be determined are great evils; and that, on the other hand, the Behar indigo system is not altogether a healthy one based on free trade, but that it has about it elements of quasi-feudal compulsion, which, acting with the uncertainty of tenure and the unsatisfactory character of litigation, tend to bribe, and hold out temptation to high-handed practices on the part of those individuals who are all inclined to yield to such temptations.

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It is only because Lowness of system has given rise to temptations to abuse that His Honour thinks that both the credit of the administration and justice to the people call for the interference of Government." In the papers of 1880 (Home Department Proceedings, Nos. 108-114 of January 1880) Government of India letter No. 3072, dated the 31st December 1868, and Sir Henry Maine's Minute (No. 114) may be read. Speaking of Zamánia, Mr. Nolan says (Rent Papers III, page 726): "The real abuse in parts of the Behar Provinces is, or was, the failure to enforce the penalties provided by the Penal Code for criminal trespass, theft, and extortion, where those offences were committed by landlords with regard to the property of the tenants." "What Behar wants are some simple provisions on the subjects discussed by the Behar Rent Committee, an increased number of Courts, and cheap and speedy justice."—*Mr. Wilkins, Rent Papers III, page 722.* "My experience, gained in working the criminal law, is that a great number of illegal ejectments are made dead in the teeth of the law."—*Mr. Sawyer, Collector of Darbhanga, Rent Papers III*, page 724. See also the Collector of Furidpur, Rent Papers III, page 611; Mr. MacDonnell, para. 56, Rent Papers III, page 748; Mr. Hallidey, last para., Rent Papers III, page 801; Mr. Finucane, Rent Papers III, page 986; Mr. Reynolds, para. 24, Rent Papers III, page 1008.

CHAPTER XII.—OF DAMAGES AND PENALTIES.

BILL I—SECTIONS 87-91.

BILL III—SECTIONS 93-97.

[REFERENCES.—*Digest*—Articles 64, 65, 66, 68; *Rent Papers*—I, pages 70-1, 155-8; II, pages 340, 344; III, pages 507, 581, 594, 599, 638, 667, 676, 685, 864, 879, 917, 929, 942, 947; IV, pages 26, 70-1, 273, 326-7.]

1. Very few comments have been offered on this portion of the Bill, which does little more than re-state the existing law. There is practically nothing to add to the remarks of the Rent Commission, Mr. Reynolds, and the Lieutenant-Governor, but it may be convenient to bring them together.

Report, para. 157.
Rent Papers IV, pages 26, 273.

2. *Sections 93, 94, 95.*—"Damages," the Commission observes, "may be awarded (1) for the illegal exaction of any sum of money in excess of the rent lawfully payable; (2) for withholding receipts for rent paid; and (3) for extorting payment of rent by duress." The principle, in each case, is that of the present law, which is, however, extended so as to apply in express terms to the exaction of a portion of the produce, beyond that which is due, as well as to sums of money. Mr. Pratt, of Purneah, would omit section 95 (which permits damages to be claimed if rent has been extorted by illegal confinement or other duress), on the ground that the Indian Penal Code provides a sufficient and more efficacious remedy for extortion and wrongful confinement. The sanctions, however, of the criminal law are not excluded by the rule in the Bill, which is, indeed, as above stated, already in force.* Mr. Wace, of Birbhúm, thinks that cases under these sections should be brought in the Revenue Courts, and that the penalty of double the amount exacted is far too low. The Lieutenant-Governor has here accepted the Draft of the Commission, with an addition, in section 94, made, apparently, in accordance with a suggestion of Mr. Finucane, entitling a tenant to claim damages if the landlord withholds the yearly statement of account described in section 49 (c).

Digest, arts. 64, 65, 66.

Rent Papers III, page 594.

Rent Papers III, page 638.

Rent Papers III, page 942.

3. *Sections 96, 97* empower the Court to award to the landlord damages not

* There is a similar rule in the North-Western Provinces Act XII of 1881, section 93.

exceeding 25 per cent. if the tenant, without due cause, leaves his rent unpaid, or fails to deposit it in the collectorate, as provided in section 50; and, conversely, the tenant is allowed to claim compensation, subject to a similar limit, if the landlord improperly sues him for rent, or if he has deposited the full amount payable. It is explained, following the judicial decisions, that in the first case the Court may not give, in addition to damages, interest before decree upon the rent decreed. But the damages (as well as the amount of rent decreed and costs) in the one case, and the compensation in the other, will carry interest at 6 per cent. There was a discrepancy here in the Bill of the Commission. In both cases the Digest gives the rate of interest as 12 per cent.; but the original Draft made it 6 per cent. on the damages payable to the landlord, and 12 per cent. on the compensation payable to the tenant. This was noticed in several of the opinions, and a uniform rule has been laid down in accordance with the Code of Civil Procedure and section 217 (*b*) of the Bill.

Digest, arts. 68, 69.

Joykissen Mookerjee, Rent Papers III, page 507; East Bengal Landholders, Rent Papers III, page 581; Mr. A. Smith, Commissioner of Orissa, Rent Papers III, page 626.

4. With this exception, and with a modification of section 96 so as to make it agree with the change in the sections relating to the deposit of rent, the Lieutenant-Governor's Draft follows that of the Commission. Some thought that sections 96 and 97 should be so altered as to make it obligatory and not optional for the Court to order the payment of damages by recusant ryots who withhold their rents without reason, or of compensation by landlords who bring unjustifiable suits for rent. But it will probably be considered that it is right that the Court should have the discretion in the matter, which the Bill allows.

Bill III, sections 50-3.

Joykissen Mookerjee, Rent Papers III, page 507; Mr. Pratt, Officiating Collector of Purneah, Rent Papers III, page 594; Lord Ulick Browne, Commissioner, Rajshahye Division, Rent Papers III, page 605.

5. The right of tenants to claim compensation for illegal exactions or for the wrongful refusal of receipts is declared in the Central Provinces Bill and in the Rent Acts of several Provinces.

Madras, Act VIII of 1865, sec. 3.
North-Western Provinces, Act XII of 1881, sec. 48.
Oudh, Act XIX of 1868, secs. 13, 18.
Central Provinces Bill, sec. 9.

CHAPTER XIII.—OF LIMITATION.

BILL I.—SECTIONS 91-94.
BILL III.—SECTIONS 98-100.
THE THIRD SCHEDULE.

[REFERENCES.—*Digest*—Articles 76, 77, 78, 79 *Rent Papers*—I, pages 71-3, 153-4, 206-8; III, pages 482, 542, 594, 599, 639, 648, 659, 667, 670, 686, 695, 701, 725, 766, 879, 885, 917, 947, 969; IV, pages 26, 71, 124-9, 273-8, 328, 372-4.]

1. It would not be convenient at this stage of the Bill to enter upon the technical details of a special limitation law. The remarks in the opinions are brief and for the most part express or imply concurrence. They add nothing to what is stated by the Rent Commission in paragraphs 158 to 162 of its Report, and by Mr. Reynolds at pages 273-4 of the fourth Volume.

2. The Bill prescribes, in a schedule modelled on that annexed to the Indian Limitation Act, certain periods of limitation for suits, appeals, and applications as between landlords and tenants; it assimilates, in some particulars, the special limitation law of the Bengal Rent Acts to the general law of India; and it lays down a rule of obvious equity, based upon the case-law, to prevent the time pending litigation for the settlement of the mutual rights of landlord and tenant, during which the former could not have sued the latter for rent, from running against the former. Clearly, if the landlord could not sue for rent till the litigation upon the respective rights of the parties came to an end, the period of such litigation should not count against him.

3. The main question of interest to a revenue officer as regards limitation in rent suits is, whether the principle that a tenant shall not be crushed by the accumulated demands of a series of years has been duly acknowledged. There is the more reason that a landlord should not be suffered to keep his claims in suspense for an indefinite or unduly prolonged time, if his rent-rolls show "impossible rents." I anticipate that the conclusion of the Rent Commission, that it is inadvisable to extend to rent suits the allowance of time for legal disability, *viz.*, minority, lunacy, idiocy, will be approved by the Government, for the reasons stated in paragraph 161 of the Report. "If the manager," it is there said, "of a minor's estate neglects his duty of realising rents

as they fall due, the minor's remedy ought to be an action for damages against such manager." The term prescribed for the recovery of arrears of rent when no deposit of rent has been made under the provisions of section 50 is three years; and, with a slight distinction which I need not particularise, a similar term is enacted for like suits in the North-Western Provinces and Oudh. The tenant, however, can protect himself under the Bill by depositing his rent in certain cases, of which the most important is where he has reason to believe that the person to whom his rent is payable will not be willing to receive the same and to grant him a receipt. When a deposit of rent has been made according to law, only six months are allowed within which a suit may be brought for arrears which fell due before the date of the deposit. The Oudh Act contains a like rule. It will be observed that a question has been raised whether a special limitation ought not to be provided for suits for rent payable in kind or by appraisement. The Lieutenant-Governor does not at present put forward any proposal on this point. There seems to be much force in the remark, that three years after the harvest trustworthy evidence of the value of the crops would be hard to obtain. The matter will probably be further considered later on.

Act XII of 1881, sec. 94.

Act XIX of 1868, sec. 100.

Bill III, secs. 53-3.

Act XIX of 1868, sec. 10.

Rent Papers IV, pages 273-4.
Mr. Cowley, Officiating Judge of Furrukh.
Rent Papers III, page 706.

Rent Papers IV, page 26.

4. *Sections 98 to 100* stand as drafted by the Commission. The few alterations in the Third Schedule are, as Mr. Reynolds remarks, of no very important character. No. 1 in the schedule of the Commission has been struck out, because it is no longer proposed to permit suits to be brought to contest awards in produce-rent and appraisement cases. A suit to enforce a forfeiture for disclaimer must be brought within three months instead of, as originally recommended, within six months. In suits for damages on account of illegal exactions, the extortion of rent by duress, and the refusal of receipts for rent the term has been reduced from a year to six months. The view that these cases are more in the nature of criminal than of civil proceedings will probably be regarded as correct. In suits for abatement one year should suffice, as provided, where the claim is founded on diminished area, more particularly seeing that when the diluvion is gradual, the suit may be brought at any time during its progress. On the other hand, the effects of a decrease in price or of the productive powers of the land might not be immediately established; and here the term of one year, proposed

Rent Papers IV, page 275.
Mr. A. Smith, Commissioner of Orissa, Rent Papers III, page 676.
Mr. Ward, of Berhdun, Rent Papers III, page 629.

No. 15, Schedule III, Bill III.

Act XIX of 1865, sec. 78, 90, 108.

No. 20, Schedule III, Bill III.

Act XIX of 1868, sec. 107.

No. 22, Schedule III, Bill III.

by the Commission, has been extended to three years. The Lieutenant-Governor has introduced a clause providing a limitation of one year in suits for damages on account of illegal distraint or of sale effected under colour of distraint. In the Oudh Act, however, the term for suits of this description is three months; and possibly their resemblance to the other suits for damages abovementioned would suggest the propriety of a shorter period than one year. The rule that a suit for the recovery of money or papers in the hands of an agent, or to compel an agent to render an account, may be brought at any time during the agency, or shall be brought within one year after the determination thereof, follows the law in force in Oudh. The Bengal Government Bill includes a provision, not inserted in the Draft of the Commission, directing that suits, under clause (*d*) of section 160, for damages on account of a refusal to furnish a *jamabandi*, shall be instituted within one year from the date of the express or implied refusal.

CHAPTER XIV.—OF DISTRAINT.

Bill III—Sections 161-27.

[References.—*Digest*—Articles 102, 104-24: *Rent Papers*—I, pages 6, 99; II, pages 215, 253, 274, 277, 286, 288, 301-8, 344-53; III, pages 467-8, 469-70, 473, 479, 487, 495, 525, 542, 543, 581, 591, 593, 595, 599, 615, 637, 668, 669, 675, 692, 695, 708, 712, 756, 757, 729, 733, 736, 753-4, 760, 768, 782-802, 837, 881, 873, 879, 881, 884, 890, 895, 901, 917, 930, 935, 942, 947-8, 970-1, 999-1,000, 1,007-8, 1,055; IV, pages 7, 8, 26, 73-7, 274-5, 312-33, 397.]

1. The Rent Commission, concurring with the Behar Rent Committee and the Behar Planters Association, proposed to abolish distraint as an offset of English law, of which the efficacy was impaired by the legislation of 1859, and which had been abused in Behar, and not always applied in a regular manner in other parts of the country. I shall here remark on (1) the reasons which suggest the maintenance of distraint in a modified form, (2) the method of distraint set out in the present Bill, and (3) the criticisms relating to the scheme offered for acceptance. I shall also endeavour to justify my observation that distraint is a primitive, if not barbarous, form of legal remedy.

Rent Papers I, page 6.

Preliminary Note, para. 35, *supra*, page 29.

2. The Behar Landholders, in their representation to the Government and at their meeting on the 5th November 1880, urged that distraint was no innovation, but, on the contrary, had the support of Hindu law and immemorial custom. If Act X of 1859 stripped the zamindars of some of the coercive power allowed them by the Regulations of the last century, this was no reason for depriving them of the remnant which they had retained. If distraint was abused, infractions of the law should be met by criminal prosecutions. The sale of occupancy holdings under decree for arrears would be a dilatory proceeding; nor would it meet the case of semi-nomadic tenants, such as are found in Purneah and in Dinájpur, outside Behar, cultivating for a two-year term and then decamping. The Chittagong Landholders used similarar guments. The zamindars of Monghyr and Backergunge prayed that distraint might not be abolished. Raja Promothonath Roy noted that in such parts of the country as North Rajshahye and South-West Bogra many ryots are *paikasht* tenants without occupancy rights, who come from a distance and take up lands for the harvest,

Rent Papers III, pages 467-8.

Rent Papers III, pages 469-70.

Rent Papers III, pages 479, 541.

Rent Papers III, pages 495, 525.

Rent Papers III, page 487.

to resign them when the crop is cut. There would be no time to sue a defaulter, and distraint is usually employed without, in the Raja's opinion, working mischief.

Rent Papers III, page 527.

The Behar Planters, while approving the abolition of distraint, noticed that no procedure had been provided in the Bill of the Commission which would enable the zamindars to obtain their dues in a fair and legal manner.

Rent Papers III, page 561.

The Landlords of Eastern Bengal repeated the contention that if occupancy holdings might be brought to sale, there were still no adequate means of realising the rents of ryots possessed of no transferable interest; and they pointed out that it was not always necessary to resort to distraint, as the mere threat of it might induce payment. They thought the attachment of his crop was a lesser evil to the ryot than the sale of his land.

Mr. MacDonnell uses the same argument. Rent Papers III, page 730.

Messrs. Barrows, Thomson, and Mylne, the Behar planters, observed on the Commission's Report: "The admission is here made that the administration of the law, and not the law itself, is faulty."

Rent Papers III, page 727.

3. The great preponderance of official opinion was also decidedly unfavourable to the proposal of the Commission; experience of the direct management of estates in the hands of the Government had satisfied Mr. Lowis, Commissioner of the Chittagong Division, that it is often a very difficult matter to induce ryots to pay what is indisputably due. In Chittagong the landlords are too much in awe of the ryots to resort to distraint in any considerable degree, but collections are facilitated by the knowledge that the power of distraint exists. On the newly-formed alluvial lands of Noakhali the recovery of rent would often be impossible unless the landlord had authority to distrain. Mr. Pratt of Purneah, though not objecting to the abolition of distraint, thought that the Bill should be referred back to the Commission to incorporate provisions for the speedy realisation of rents. "When the ryots," he said, "of several *mauzas* band themselves together to resist all payment of rent, even though they abstain from killing or maiming any zamindari *amla* or *peons* who may have the temerity to approach (a state of things which has occurred in my own experience in some of the Bengal districts), it is simply impossible for the zamindar to sue each individual ryot in the Civil Court. He would often be ruined before the process was half through." Mr. Porch, of Maldah, considered that distraint should be everywhere enforceable in respect to the holdings of *paikasht* or non-resident ryots.

Rent Papers III, page 472.

Rent Papers III, pages 491, 502.

Rent Papers III, page 590. See also Mr. A. Smith, Commissioner of Orissa, as to tenants without a transferable interest, Rent Papers III, page 975.

Mr. MacDonnell, speaking with the intimate knowledge derived from the personal supervision of wards' estates and the personal management of Government estates, could not but express "amusement at the credulity of the Commissioners that, without a right to distrain, zamindars could ever collect their rents." Mr. Edgar strenuously opposed the abolition of distraint in Behar. He believed the consequence would be a general refusal to pay rents which had been recently enhanced, and in many cases a refusal to pay any rents whatever. "Now this," he went on to say, "would scarcely affect planters, whose primary object is not to realise rent but to grow indigo, and who in many cases have to pay the ryots, as the price of their indigo, an amount nearly equal to the rent payable by the ryots. The result would be that the landlords would get the rents due from the indigo *thikas* in full, and diminished or no rents whatever from their remaining lands, and that the indigo-planters would become masters of the situation. Instead of having to pay heavily for *thikas*, as they do at present, they would be competed for as the only profitable tenancies." But whilst maintaining distress, he would specially guard against its being turned into an engine for effecting enhancement; and would require proof that the rates of rent claimed on the levy of distress were rates which had actually been paid in a previous year. There were other opinions for the retention of distraint, while the opinions in favour of its abolition were, in general, mere expressions of concurrence in the views of the Commission. Briefly, the arguments against the recommendation of the Commission were that distraint is no exotic novelty in India; that defects in administering the law constitute no sufficient reason for altering its substance; that if the law is inoffensive, it should be reformed, not rescinded; that, granting it might be more effective than it is, the mere maintenance of provisions for distraint, without their continual enforcement, tends to discourage combination and contumacy; and finally, that without restraint, or the authority in reserve derived from its legal possibility, the zamindars could not collect their rents, more particularly on flitting tenancies or in other cases where the ryot had no transferable interest in the soil which could be brought to sale.

Rent Papers III, page 730.

Rent Papers III, pages 743-4.

For retention of distraint:—Rent Papers III—Mr. Hopkins, page 695; Collector of Mymensingh, page 695; Mr. Money, Presidency Division, page 696; Lord Clive Browne, Rajshahye Division, page 696; Mr. Metcalfe, Patna, page 708; Mr. Keeble, Gaya, page 712; Mr. Nolan, Shahabad, page 720; Shahabad Landowners, page 720; Mr. Barrow, Darbhanga, page 720; Mr. Beveridge, Patna, page 720; certain subordinate judicial officers, pages 832, 837; certain pleaders, Cuttack, page 864.

For abolition of distraint:—Rent Papers III—Mr. Ware, Birbhum, page 687; Mr. Stevens, Burdwan, page 648; Mr. Price, Midnapur, page 686; Mr. Cowley, Purnea, page 710; Mr. Gordon, Tirhut, Mr. Hoss, Jessore (page 783), Mr. Cochran, Cuttack (page 864), and Mr. Stewart (page 870) afterwards accepted Mr. Reynolds' proposals.

3. There is a great deal of evidence, both in these and in earlier papers, that the real evil which the Legislature should suppress is, not any hardship arising out

See, in addition to remarks cited below, Mr. Metcalfe, Rent Papers III, page 709; Mr. Edgar, Rent Papers III, page 754; Mr. Price, Rent Papers III, page 686; Mr. Stevens, Rent Papers III, page 670; and Sir Stuart Bayley's *Note* at page 297, Bengal Revenue Proceedings, November 1879.

of the legitimate exercise of the right of distraint, but certain forms of agrarian oppression either resembling distraint or committed under the cloak of the distraint procedure. Mr. Nolan cannot gather that the ryots object to distraint. "The form of agrarian crime," he says, "sometimes called the abuse of the right of distraint, has not, that I can see, any connection with that right. It consists in stationing peons to prevent the ryot from cutting his crop until he pays some demand, legal or illegal, or in carrying off his cattle for the same purpose." The Behar Landholders unconsciously supply some indication of the probable antiquity of this system where they derive the term *agor-batni* (applied to the custom of produce-rents) from the practice of sending watchmen (*agroras*) to guard the standing crop lest any should be made away with. Mr. Reynolds informs us that in Behar "crops have been distrained for enhanced rates, and for rent not actually due when the distraint was made, and the distress has been maintained without any application being made to the Court for a much longer period than the law allows, with the object of forcing the tenant into compliance with an excessive or disputed claim." Extortion and the illegal seizure of cattle should be dealt with by the Magistrate; but the object evidently is to diminish or remove the temptations to malpractice which the present law holds out. "As regards Behar," says Mr. Reynolds, in another place, "the present system of distraint is nothing less than a system of oppression and robbery, and the alternative lies between abolishing distraint altogether or establishing some such procedure" as is here proposed.

Rent Papers III, page 726.

Rent Papers III, page 443.

Rent Papers IV, page 274.

Rent Papers III, page 1006.

Para. 10, 1868, page 462.

"Early History of Institutions," page 276.

Rent Papers IV, page 274.

5. In my Memorandum on the Rent Question in Behar, I characterised the system of so-called distraint which the present chapter enacts as substantially amounting to attachment before judgment. That description is correct, because attachment is "the taking of property into the actual or constructive possession of the judicial power"; and under section 110 the distrained property is to be placed in the charge of the officer deputed by the Court or his nominee. But Mr. Reynolds' remark, that the scheme virtually provides a procedure having the effect of a *summary or parte* trial in respect to current rents, is more complete, because attachment does not necessarily imply the ultimate disposal of the property to the advantage of the party in whose behalf the attachment has been

made, whereas here, unless the claim is forthwith admitted and satisfied, the distraining officer will proceed to sale within a week. For the protection of the ryot, the Bill cancels the right of private seizure hitherto allowed to the zamindar; distraint may be made only after application to a Court, and through its officer. The zamindar may not depute his own dependant to levy distraint, as heretofore. On the other hand, under the existing law, the ryot can stay the sale by instituting a suit to contest the demand, and can cause the distraint to be withdrawn by executing a bond binding himself and his sureties to pay whatever sum may be adjudged to be due from him with interest and costs of suit. Under the Bill there is nothing to stay the distraint except the deposit or payment of the amount of the demand; and the right to sue, failing such deposit, is practically, looking to the brief time allowed, no more than a legal claim for damages after the fact. In the Bill, as in the present law in Bengal and elsewhere, the burden of proof in the regular suit is thrown (not on the nominal plaintiff or ryot but) on the actual complainant or zamindar. The applicant for distraint must establish his case in the same manner as if he had himself instituted a suit for the arrear of rent alleged to be due. Distraint by persons other than officers appointed by the Court is declared to amount to criminal trespass; and lastly, whereas crops stored by the cultivator are now protected from distraint, under the Bill all his crops, whether stored or not, may be distrained till they have passed out of his possession.

Digest, arts. 116, 118, 119, 120.

Digest, art. 130.
Oudh, Act XIX of 1868, sec. 72.
North-Western Provinces, Act XII of 1881, sec. 93.

Bill III, sec. 121, proviso.

Bill III, sec. 122.

Digest, art. 108.

Bill III, sec. 10a.

6. Several of the selected officers consulted on Mr. Reynolds' Bill consider that if distraint is to be retained in the law, these proposals are as good as any which could be framed. No official except Mr. Nolan, whose views I shall notice presently, seriously objects to them as a whole. The British Indian Association, however, asserts that the scheme will not in the least facilitate the recovery of rent, the *ex-parte* suit will drag its slow length along till the crop has been removed, and the ryot will be burdened with the costs of a second proceeding; and Mr. Westmacott, while thinking that it would be a great mistake to deprive a landlord of the right of distraint which is in accordance with custom and tradition, dislikes the provision that recourse must be had to the Court. "The people," he observes, "are only too ready to go into Court without being compelled to do so, and the bailiffs

Mr. Wesley, Rent Papers III, page 870.
Mr. Bernard, Rent Papers III, page 880.
Mr. Finucane, Rent Papers III, page 943.

Rent Papers III, page 900.

Rent Papers III, page 917.

of the Court will make a great profit out of both parties." The three or four main points which elicited remark may be briefly indicated. (1) Mr. Reynolds had proposed to enact that an application for distraint might include claims against any number of tenants not exceeding five, if their lands were held from the same landlord and in the same village. Mr. Venoy, of Backergunge, sees no reason for any restriction on the number; and Mr. MacDonnell, of Sirsa, would extend it to ten. The Lieutenant-Governor has struck out this section altogether. (2) Mr. Anderson, of Bankura, would confine the law to demands upon unprivileged tenants, thus exempting tenants at fixed rates and occupancy ryots. Mr. Dampier, however, urges that if the right of distraint was limited to unprivileged holdings, the crop of a defaulter might be distrained in order to obtain, by the probable failure to sue, a constructive admission that the ryot had no right of occupancy. Precautions might be taken to obviate this danger in dealing with the proof of the right; and possibly, if the provision for the summary sale of occupancy holdings is to be retained in the Bill, it should be considered whether the ryots to whom section 148 may be declared applicable should also be exposed to the penalties of distraint. Personally, I should answer such a question in the affirmative; for it is worse for the ryot to lose his land than to see his crop distrained for arrears of rental. It will be noticed that, under section 127, the provisions of the present chapter could be suspended in any local area, and the provisions of section 148 would not come into force except by the declaration of the Local Government. Any desirable adjustment might therefore be made under the terms of the Bill. (3) Rather frequent and, in some instances, strong doubts are expressed as to the propriety of permitting the distraint of produce which has been stored by the cultivator. The crops of different holdings might be mixed up in the granaries. The house-entry, without previous notice, possibly at an inconvenient time, or even at night, might be regarded as an insult to the family and might lead to a breach of the peace. The distraining officer would not be of much rank, and if he had to distinguish and identify the crop by a sort of summary local inquiry, there would be opportunities of corruption. In Oudh and the North-Western Provinces, as, at present, in Bengal, standing crops and other ungathered products of the earth and crops or other products when reaped or gathered and deposited in any

Bill II, sec. 109.

Rent Papers III, page 884.

Rent Papers III, page 891.

Rent Papers III, page 930; see also Mr. Larminie as to suitable interest, and Mr. Nolan, Rent Papers III, pages 949, 720.

Rent Papers III, page 970.

Mr. Anderson, Rent Papers III, pages 900-1. Mr. Larminie, Rent Papers III, page 948. Mr. Venoy, Rent Papers III, page 884.

Mr. Dumas, Rent Papers III, page 896.

Oudh, Act XIX of 1868, sec. 41.
North-Western Provinces, Act XII of 1881, sec. 61.
Digest, art. 109.

threshing floor or place for treading out grain or the like, whether in the field or within a homestead, are subject to distraint; but grain or other produce is exempt after it has been stored by the cultivator. In Madras, on the contrary, both crops and moveable property may be distrained; but notice must be given; distress may only be made after sunrise and before sunset; and there are also detailed rules for the protection of the women's apartments, and describing what doors the distrainer may or may not break open. (4) Lastly, comments are made upon the *ex parte* character of the proceedings. Up-country, oral and documentary evidence of the sort required is procurable without difficulty by well-to-do claimants; the first step in the contest is more than half-way to success; *primâ facie* proof of the justice of a claim is easily adduced where the opposite party, in his absence, cannot put the Court on the scent of the concealed fraud. On such grounds Mr. Anderson is opposed to an *ex parte* procedure, at least without security being taken from the applicant. Mr. Beames would allow the clauses of the Bill to stand; but would permit the ryot to do one of three things, *viz.*, (*a*) to deposit the amount of the claim, (*b*) to produce receipts or other proofs that the amount has been already paid or that he is entitled to remission or the like, or (*c*) to institute a suit to contest right to distrain; and these opportunities should be offered before the sale, which should be stayed if the ryot took any one of the three courses open to him, not after it, when the damage done is virtually irreparable.

Madras, Act VIII of 1865, secs. 14, 15 25, 29, 30, 39.

See objections of Indian Association on behalf of the ryots, Rent Papers III, page 1005.

Rent Papers III, page 991.

Rent Papers III, page 805.

7. In one of those interesting passages which have gone so far to bridge the gulf between antiquity and the modern world and to interpret and connect the institution of Eastern and Western societies, Sir Henry Maine has (to borrow his own phrase) tracked the remedy of distraint of goods through the twilight of various legal systems. Starting from the *Pignoris Capio* of the old Roman law, he has come upon plain vestiges of the form in the English law of distress, and has pointed to traces of similar extra-judicial remedies in the continental Teutonic laws, in the ancient laws of Ireland, and in the Brahminical law and well-known customs of this country. The Hon'ble Mr. Stokes was the first to identify the custom of "sitting *dharna*" with the fasting upon the Irish chieftain, thus linking in time and space the extreme limits of Aryan

"The Early History of Institutions," Lectures IX and X on the Primitive Forms of Legal Remedies.

Maine, *loc. cit.*, page 207.

practices. To any one at all acquainted with the Southern Punjab, there is little difficulty in perceiving the resemblance between the distraint of primitive law and the tribal cattle raids of the *Bats* or the border. Confining the cattle of the debtor is one of the permissible methods of enforcing a claim mentioned by Sir Henry Maine as known to the Hindu text-writers. We have seen that the illegal seizure of cattle is amongst the so-called abuses of distraint which occur in Behar. It is curious that the British Government should have brought back to the East and established, with many of the most recent Western improvements, in almost every province of the Empire where the relations of landlord and tenant constitute a question of large or first-rate importance, an institution which has been shown to be a survival in English law from the days when redress was sought by private warfare. In India the newest and the oldest forms of distraint are discernible in striking proximity; and now, independently, in two separate proposals for legislation, we see, in the Central Provinces and in Bengal, distraint on the eve of transformation into its most civilised shape—that of attachment before judgment.

Maine, *loc. cit.*, page 208.

Madras, Act VIII of 1865, secs. 14-30.

North-Western Provinces, Act XII of 1881, secs. 56-90.

Oudh, Act XIX of 1868, secs. 47-92.

There is no distraint in the Punjab.

Central Provinces, Tenancy Bill, 31st July 1880, secs. 17-25.

Maine, *loc. cit.*, page 277.

8. "The modern theory of distress is that a landlord is allowed to distrain because by the nature of the case he is always compelled to give his tenant credit, and that he can distrain without notice because every man is supposed to know when his rent is due." So long as any private person may use actual force in satisfying a private claim of a civil nature, I am, I think, justified in terming such a procedure a barbarous one, especially when we look to the past history of rights of this kind. But even if the law of distraint has divested itself of this relic of anarchy, it is still cumbered by a double heritage from its archaic origin. First, the existence of an extra-judicial process implies the assumption that the Courts cannot always enforce their decrees; and secondly, the whole procedure of distraint presumes that the complainant is more likely to be in the right than he against whom he complains. Where there is no settled administration and violent wrong is rife in the land, both assumptions may accord with facts. The man most likely to be in the right might be he who "faced the manifold risks attending the effort to obtain redress." But in proportion as the Courts become able to give rapid and certain effect to their decisions, the necessity for coercion before judgment, except on rare occasions, dies away.

Maine *loc. cit.*, pages 272, 278.

9. It is proposed to make the law of distraint here under discussion the normal method of recovering current rents; and one of the recommendations adduced in favour of the procedure is, that it will give a great advantage to the landlord who keeps accurate and systematic accounts. I would venture to remark that the equity of the whole scheme rests entirely on the strength of the presumption that the landlord who moves the Court for permission to distrain will generally have justice on his side. Unless the amount of rent claimed is, in nine cases out of ten, really due, there can be no justification for seizing and selling the ryot's property without hearing him in his defence. Doubtless the *prima facie* proof brought forward will usually be the zamindari accounts. If the Courts habitually accept such proof, there is evidence, to which I am about to refer, that wrong will frequently be done. If, on the other hand, such proof is usually rejected, the chapter will benefit comparatively few of the zamindars.

Mr. Reynolds, Rent Papers IV, page 397.

Mr. Reynolds, Rent Papers III, page 1008.

10. I would now invite the perusal *in extenso* of the remarks of Mr. Nolan at pages 873-4 of the third Volume of the Rent Papers. It is possible that he may have somewhat overlooked the force of the proviso as to the burden of proof in section 121; but he believes the proposed law would introduce evils far more subtle than those which now exist. He says that the great zamindari abuse of the Lower Provinces is the manufacture of fictitious rent-rolls showing rent due from the ryots in excess of that which they have agreed or are bound to pay; and he anticipates that the zamindars would at once proceed to distrain on those fraudulent documents and obtain *ex-parte* decrees. Mr. Larminie argues that the landlords have, to a great extent, themselves to blame if in collecting their rents they experience difficulties which would diminish did they keep clear accounts, give regular receipts, and credit fairly to rent payments duly made in respect of it. As it is, the Courts, knowing the chicanery and dishonesty of the landlords' dependants, have learnt to distrust their statements.

Rent Papers III, page 943.

11. Now, for the reasons summarised in this Note, there seems no alternative, under the present administrative conditions of Bengal, but to maintain distraint in some shape or other. If the Courts, instead of having to grope for the truth through the mists of perjury and forgery and fraud, were supplied with records, prepared and maintained by independent

authority, which would show the rates of rent payable, and the extent of land held by the ryots, there would be little reason to hesitate, when demands were so supported, before giving effect to them by some such plan as is adopted on Court of Wards' estates in Bengal, or in the North-Western and other Provinces, in the collection of the Government revenue. There are, however, no such records of ryots' holdings, nor does the Bengal Government propose to frame any. The evidence adduced in *prima facie* proof would be the zamindari accounts, of which, not to overstate the fact, the value is often doubtful. I anticipate that the chapter will be accepted, but perhaps with some modification, as an experiment, possibly introducing some improvement on the existing law. Its operation can be suspended by the Local Government, as already said, if in any local area it produces hardship. But if I may express a mere personal opinion, I am quite unable to regard this chapter as a satisfactory and final solution of the question how the Bengal zamindars may best be aided in the realisation of their current rents. I think that nothing short of a field survey and a complete record-of-rights would prove an efficacious remedy for their difficulties.

CHAPTER XVI.—OF THE RECOVERY OF ARREARS OF RENT IN CERTAIN CASES WITHOUT DECREE.

BILL I.—SECTIONS 133-46.

BILL III.—SECTIONS 147-63.

[REFERENCES.—*Digest*—Articles 35, 36, 135-47; *Rent Papers*—I, pages 73-4, 168-77; II, pages 212, 214, 218-9, 244; III, 451, 487, 507-8, 529, 539-59, 585-6, 595, 630, 644, 659, 667, 668, 677, 695-6, 701, 725, 806; IV, pages 3, 27, 92-93, 279-82, 330-40, 395.]

1. The *patni* tenure is believed to have originated on the estates of the Maharaja of Burdwan shortly after the permanent settlement. It was apprehended in 1793 that zamindars, having obtained the benefit of a demand fixed in perpetuity, might make improvident grants at inadequate rents, either to raise money by discounting their rental or for other motives, and might thus reduce themselves or their heirs to the position of revenue defaulters. It was therefore enacted that no leases or other engagements should be made for a term exceeding ten years, and it was further declared that when lands were sold to make good arrears of public revenue, all engagements (subject, however, to certain exceptions) subsisting between the proprietors and their dependent *talukdárs*, farmers, and ryots on account of such lands should be cancelled. This prohibition of permanent grants was destined to prove abortive. So early as 1794 it was represented on behalf of the Maharaja of Burdwan, who had great difficulty in realising his rents, that there should not be two methods for the recovery of arrears,—the one summary and efficient for the satisfaction of the claims of the Government, and the other tardy and uncertain in regard to the satisfaction of claims due to its subjects,—more especially where the ability to discharge the Government demand depended on the previous realisation of the sums due to the zamindar in a private capacity. It then seems to have occurred to the Maharaja that he might bind his tenants to the conditions to which he was bound by the Government; and *patni** tenures are said to have

Hunter's Statistical Account of Bengal, Vol. IV, pages 78-83; Tagore Law Lectures, 1875, pages 356-8, 428; Regulation XLIV of 1793.

* I have not been able to ascertain the original meaning of the word *patáni*. Wilson (Glossary, s. v.) questions whether the rendering "settled or established" in Hodgson's Analysis is correct; and he regards the interpretation "constituting" as equally doubtful. Has any one ever suggested any connection with *patta*, a lease?

Hunter, loc. cit., page 79.

Preamble to Regulation VIII of 1819, Regulations V and XVIII of 1812.

Regulation VIII of 1819.

been first created by Maharaja Tej Chand in 1799. The system "gradually extended, and in 1825 nearly the whole estate of the Maharaja was leased out in this manner." Meanwhile, by 1812, the grant of leases at a rent fixed in perpetuity had become common with the zamindars of Bengal, and at that time the rule limiting fixed engagements for rent to ten years was rescinded, and zamindars were permitted to make perpetual leases, subject to the avoidance of the grant on the sale of a grantor's estate for arrears of Government revenue. A further step was taken in 1819, when tenures granted for a longer term than ten years, during the period of prohibition from 1793 to 1812, were confirmed, and rules were laid down for the regulation of the periodical sales on account of arrears of rent of *patni talaks* and others held on like conditions. *Patni* tenures had then "extended through several *zillahs* of Bengal," and the *patni* sale law, which thus arose, has remained in force up to the present day.

2. This law, Regulation VIII of 1819, is re-enacted, with a few modifications, in the chapter now under review. If the tenure-holder is in arrears on the first day of the first or seventh month of the year, the zamindar may petition the Collector, who thereupon publishes a notice specifying the balance claimed, and announcing that the tenure will be sold if such balance (or if the application be in the middle of the year, a certain part thereof) be not paid before the first of the next month. The zamindar likewise gives notice at his *kachahri* and on the land, and this he must do before the fifteenth of the month. Sale may then be stayed (1) by payment, which may be made either by the defaulter or by an under-tenure holder of the first degree below the defaulter; or (2) if the tenure-holder summarily contests the demand, as advertised within the period of notice, and the determination be made in his favour before the date fixed for the sale. The sale, however, will not be stayed by the mere fact that such a summary investigation is pending; the applicant must succeed before sale-day in his summary claim, or, if it has not been settled, the sale proceeds and he has no remedy but by subsequent suit. The tenure is sold free of all incumbrances created by the act of the defaulter "unless the right of making such incumbrances was expressly vested in the holder by a stipulation to that effect in the written engagements under which the tenure was held. No transfer by sale, gift or otherwise, and no mortgage or

other limited assignment" is valid against the zamindar unless he shall have consented thereto. All leases granted by the defaulter are cancelled, except *bona fide* engagements with ryots having a right of occupancy whom the purchaser may not eject, but whose rents (as is proposed in the Bill) he is at liberty to enhance according to law. After sale the defaulter, or any party desirous of contesting the right of the zamindar to make the sale, may sue for its reversal. The under-tenure holder staying the sale by depositing the balance has (after satisfying any claim for rent due from himself) a mortgage (according to the Bill, a first mortgage) upon the tenure; and the defaulter can only recover it from him by payment of the sum due with interest, or when the proceeds of the tenure have covered the amount, by re-entry after regular suit. The claim of the zamindar is adjusted from the sale-proceeds. The under-tenure holder if undamaged, and if not himself in arrears, may sue for compensation, thus having a chance of redress for the loss of his tenure through the default of his superior. The balance of the sale-proceeds, after satisfying such demands and deducting the Government commission, is paid over to the person whose tenure has been sold. Throughout these proceedings the functions of the Collector are almost entirely automatic. Some discretion may, indeed, be exercised on the application, within the period of notice, for a summary inquiry; beyond this he has only to see that the notice has been duly served by the proper date, and that the balance is due according to the zamindar's account, and then to sell like a machine. "The proprietor," it is said, "shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the Collector or other officer making the sale be answerable in any respect except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in the chapter."

3. I have sketched the main features of the *patni* sale procedure, because the two important questions raised are—*first*, to what classes of tenures or holdings shall the provisions above summarised be extended; and *secondly*, shall these provisions be retained in the Bill, or promulgated in a separate enactment? The second question depends, to a great extent, upon the first; for if it is determined that occupancy holdings shall, in any case, be subject to summary sale, it would seem expedient that the law on the point should be included in

the present measure, which, though not by any means dealing exclusively with the occupancy right, will constitute the occupancy ryots' code. The question also depends in part on the view taken as to the proposals for the enhancement of the rent of tenure-holders. If the status of the tenure-holder, as well as the status of the ryot, must be touched at some points, it might be well, whilst the law is under amendment, to treat tenures in a comprehensive way; and this could not be done if the prominent incident of summary sale were left out of consideration. The matter is noticed, but can hardly be said to have been debated, in the papers. The Maharaja of Burdwan remarks that the Rent Commission did not assign any reason for incorporating this portion of the law in its Draft Bill; and he would prefer a separate enactment on the subject.

Rent Papers—II, page 212; III, page 320.

Mr. Reynolds, on the 29th December 1880, did not think it necessary to import the *patni* sale law into the Bill; but a few months later he had become convinced that there was good reason for adopting this course, the matter being essentially a part of the law of landlord and tenant. It may be accepted that this sale procedure stands in need of modification, at all events in some not very important particulars; and for this reason, if for no other, it may be thought that the present opportunity should be taken to amend it.

Rent Papers IV, page 396.

Rent Papers IV, page 270.

4. Upon the first question, I have already noted in connection with the hypothecation for rent provided in section 56 of the Bill; and I ventured to deprecate the application of the summary procedure in the case of occupancy holdings. Sir Ashley Eden in December 1880 said that the zamindars wanted this concession, but that it seemed to him dangerous to grant it. Mr. Reynolds also thought there were great objections to such a step. At the Behar Landholders Meeting of 5th November 1880 it was observed that the Bill of the Commission confined the summary process to tenures. The Behar Planters made a similar representation. The East Bengal Landholders Association (the remarks already quoted, notwithstanding) suggested that the procedure of this chapter should be extended to all tenures, under-tenures, and occupancy holdings, which are liable to be sold for arrears of rent. The British Indian Association held that the recovery of rent would be greatly facilitated, if the *patni* sale law procedure were made applicable to suits (sic) for the recovery of current rent from occupancy tenants. Mr. Pratt, of Purneah, though dissatisfied with the hypothecation for rent as an insufficient

Note on Chapter VIII, paras. 16 to 17, *supra*, page 72-73.

Rent Papers IV, page 396.

Rent Papers III, page 470.

Rent Papers III, page 520.

Rent Papers III, page 582. Note on Chapter VIII, para. 17, *supra*, page 74.

Rent Papers III, page 1000.

Rent Papers III, page 966.

measure standing alone, wished that some such system as the present could be devised to aid landlords in collecting their rents. Another energetic advocate of this principle is Lord Ulick Browne, of the Rajshahye Division. The Manager of the Chakdighi Estate in Burdwan also urged the extension of the *patni* sale law to under-tenures and occupancy holdings; but the District Officer, Mr. Stevens, who subsequently approved the hypothecation section, while admitting that there would be less objection to making under-tenures of a higher class saleable in this way, was strongly of opinion that there would be great danger in allowing *ryoti* holdings to be brought to sale summarily.

Rent Papers III, page 256.

Rent Papers III, pages 847, 878.

5. "As the law now stands, this procedure can be used only by 'proprietors' of revenue-paying estates, and in respect of *patni tenures and other tenures upon which the right of selling or bringing to sale for an arrear of rent has been specially reserved by stipulation in the engagements interchanged on the creation of such tenures.*" The Rent Commission did not propose in its Bill to alter this rule, but invited the consideration of the question whether the procedure should be extended. The Lieutenant-Governor's Bill includes permanent tenures of which the annual rent is not less than fifty rupees, and occupancy holdings of which the rent is payable directly to any landlord specified in a declaration made by the Local Government under circumstances already described. Having now more closely examined the procedure, I am rejoiced that the Lieutenant-Governor has not given this proposal more than a tentative support. It is not surprising that the zamindars are said to welcome it. They would naturally approve proceedings in which, if the ryot failed to establish a defence on a summary investigation within the short period of notice, the Collector would act on their responsibility and on the evidence of their accounts and of their dependants. It is true that the privilege would be accorded only to zamindars who kept satisfactory accounts, and doubtless only to men of substance and character. "It is extremely rare," says the Commission, "to hear even an allegation that *a tenure* has been brought to summary sale without arrears being *bond fide* due." But even if the present law has worked well, it is submitted that the view taken in the Revenue Department of the Government of India may very probably be that there is no worse principle than to suffer the action of the revenue authorities, in matters touching the holdings

Report, para. 103.

Bill III, secs. 147-8.

Note on Chapter VIII, para. 14, *supra*, page 72.

Rent Papers IV, page 8.

Italics mine.

C. L. T.

and subsistence of the cultivating classes, to be action of a merely mechanical kind. Here, if anywhere, there is room for discrimination, for knowledge of local details, for timely interposition to shield the rural communities, so far as foresight and management can avail, against the ills to which they are continually exposed by physical vicissitudes. If there was any misrepresentation or mistake about the service of the notice,—a service which is made by the peon of the zamindar and proved by his dependant,—the authority of the Collector would become the passive instrument for the eviction of the peasant. I do not think that zamindars should be stimulated to the maintenance of correct accounts by the offer of such practically irresistible means of coercion. It may be said that in all or most estates, at least in Eastern Bengal, the need of some cogent method of compulsion is a pressing one; but it may be rejoined that the best controlled estates are those which would least require the aid of such a sanction. The Bengal Government may well be left to decide what tenures shall be liable to summary sale; but I sincerely trust that the Government of India will pause before it consents to impose this liability upon any class of occupancy holdings. Such a measure, it is respectfully represented, would be a direct violation of the principle of revenue administration which it is now sought to enforce—the principle, I mean, of the continuous, circumspect, and detailed adjustment of local burdens to the varying, yet narrow, circumstances of the labouring men who have to bear them.

6. It will be observed that we have no local criticism of the proposal above discussed, beyond the few hardly more than casual observations elicited by paragraph 163 of the Report of the Commission. The Draft of the Commission, as I have stated, reproduced the existing law. The Draft prepared by Mr. Reynolds and circulated to selected officers ended with the fourteenth chapter on distraint. For the rest, the amendments proposed relating to the dates of petition, to the inclusion of balances in the next half-yearly specification when the Collector's summary order has been reversed on appeal, to the first mortgage of the under-tenure holder, to the right of the purchaser to receive a rent-roll from the former tenure-holder, to the jurisdiction of the Collector, and the like, are all matters of detail, which, as the Lieutenant-Governor notes, may best be considered in Select

Committee. With the exceptions of Babu Joykissen Mookerjee and the Maharaja of Burdwan, no one consulted upon the Commission's Draft has written at any length upon this chapter. Mr. Reynolds has dealt with their criticisms very fully, and no attempt need be made to add anything to what he has said at pages 35 to 38 of his Memorandum of the 18th May 1881.

Babu Joykissen Mookerjee, Rent Papers III, pages 309-25.
Maharaja of Burdwan, Rent Papers III, pages 329-39.

Rent Papers IV, pages 279-82.

CHAPTER XVII.—OF CERTAIN SPECIAL RULES OF PROCEDURE APPLICABLE TO SUITS BETWEEN LANDLORDS AND THEIR TENANTS OR AGENTS.

BILL I—SECTIONS 147-64.
BILL III—SECTIONS 164-88.

(REFERENCES.—*Digest*—Articles 80, 94, 95, 96, 168, 169, 172, 173, 174, 177, 178, 179, 180; *Rent Papers*—I, pages 7, 8, 9-13, 35-40, 63, 68, 74-7, 94, 177-81; II, pages 210, 215, 237; III, pages 451, 482, 508, 609, 599, 663, 666, 695, 701, 725; IV, pages 27, 92-3, 283-5 549-53.)

Sections 164 to 175 are of a *miscellaneous* character and will require separate notice. *Sections 176 to 181* relate to the *measurement of lands*; and *sections 182 to 186* to *suits against agents*. The chapter will be considered under the above heads.

Miscellaneous.

Digest, arts. 173, 174.

2. *Sections 164 and 165* merely (1) enact that the Code of Civil Procedure shall apply to suits between landlord and tenant, except as is otherwise expressly provided, and (2) determine where such suits and suits between landlords and their agents shall be instituted. Under *section 166* managers in wards' estates or in estates under Government management or appointed by the Civil Court may be sued in their own names. Under *section 167 naibs* or *gomashtas* thereto specially appointed are to be deemed the recognised agents of their principals; and notices may be served upon and money or fees tendered to the *naib* or *gomashta* instead of to the landlord. There are some slight improvements here upon the existing law, which are specified in paragraph 165 of the Report of the Commission. Provisions of a very similar character are to be found in the Rent Acts of Madras and the North-Western Provinces and Oudh.

Digest, arts. 168, 169.

Madras, Act II of 1865, sec. 31.
Madras, Act VIII of 1865, secs. 62, 79.
North-Western Provinces, Act XII of 1881, secs. 108 to 141.
Oudh, Act XIX of 1868, Schedule D, clause 2, and sec. 109.

3. *Section 168* is important. As originally framed by the Commission, it gave landlords and ryots the right to sue for the determination of the conditions of tenancy including the area of the land, the rent payable and the class of the ryot, and was intended to take the place of the old law as to the interchange of *pattahs* and *kabuliyats*, the decree being so framed as to include all needful particulars. The Commission further drew an arbitrary line between ryots and tenure-holders in section 11 of its Bill, on the basis of

Preliminary Note, paras. 13 and 22.

Rent Papers IV, pages 549-50.

area, no one being deemed to be a ryot who might hold by one demise one hundred standard *bigahs* of land or more. The Lieutenant-Governor, as already mentioned, has omitted section 11 of the Commission's Draft, and has provided in the present section that if it shall be disputed, in a suit for the determination of the conditions of the tenancy, whether one of the parties is a tenure-holder or a ryot, the Court shall proceed to decide the question. His Honour has further extended the section so as to make it applicable not only in the case of landlords and ryots, but also in the case of landlords and tenure-holders. It will be observed that, in discriminating between ryots and tenure-holders, the Court will have regard to the custom of the district, and that if the person whose status is in dispute has sub-let more than one-half the total area demised to him, it *may* (not *shall*) adjudge him to be a tenure-holder and not a ryot. There is no local opinion on this proposal, for the reason, mentioned in a previous Note, that this chapter of Mr. Reynolds' Bill was not circulated.

See Rent Papers III—Mr. Beames, page 809; Mr. Westmacott, page 905; Mr. Ambrose, pages 931-2; Mr. Larminie, page 943; Mr. Hampton, page 963.

4. *Sections 169, 171, 172, 173, and 174* are in accordance with the present statute-law or the judicial decisions, and need no discussion. Their purport is that ejectment may be stayed on payment of the arrears of rent within fifteen days from the date of decree; that, in certain cases of ejectment, the Court may issue immediate execution, which shall proceed, notwithstanding appeal; that there shall be no appeal from the decisions of District or Additional Judges if the value of the claim do not exceed Rs. 100, and if no question of enhancement or title or conflicting interest be determined; and that review of judgment is not admissible after thirty days. *Section 175* directs that any notice or summons not specially provided for shall be served as prescribed in the Civil Procedure Code. The Commission had here inserted a section (153) specifying the cases in which suits by ryots for abatement should be instituted before the Civil Court or the Collector respectively. But as the alternative enhancement procedure proposed by the Commission has been abandoned, this section has been omitted in the present Bill.

Digest, arts. 93, 177, 178, 179, 180.

Rent Papers IV, page 289.

5. The policy of *section 170* will perhaps be regarded as open to great doubt. The portion of the existing rule which is retained is that, in the execution of a decree, process shall not be issued simultaneously against both the person

and the property of the judgment debtor; and so far it is probable that no objection will be raised, and that the reasons given in paragraph 709 of the Report of the Commission will be deemed an ample justification for the maintenance of this provision. If the ryots "have moveable or immoveable property which can be made available to satisfy the decree, imprisonment serves no useful purpose, and is in practice seldom resorted to. If they have property which they have concealed, imprisonment occasionally brings about a settlement. If they have no property, they can, if imprisoned, apply to be declared insolvent." But as the Rent law now stands, in the execution of any decree thereunder for the payment of money not being money due as arrears of rent of a saleable tenure or under-tenure, execution cannot be had against the immoveable property of the judgment debtor unless satisfaction cannot be obtained against his moveables. The Bill entirely alters this. The present section permits process of execution against the property to be issued against either the moveable or immoveable property, or against both; and section 50, already quoted, enacts that where the rent of any tenure, under-tenure, or *occupancy holding* is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof save as provided in the chapter relating to distraint, until he has first brought the tenure, under-tenure, or holding to sale either in a summary manner or in execution of a decree for the rent.

Digest, arts. 151, 157, 172.

Note on Chapter VIII, para. 14, *supra*, page 71.

6. Putting aside distraint and the question of bringing tenures and under-tenures to sale in execution of a decree, the principle that seems to demand even further examination than that which it has yet received in these Notes is, that on a decree for arrears of rent the zamindar must bring occupancy holdings to sale in preference to any other process. The Commission sees no reason why any distinction should be made between judgment creditors for rent and other judgment creditors in respect of their being allowed to proceed against moveable and immoveable property indiscriminately. But in point of fact, the Commission has made such a distinction and one against the interest of the cultivators, who depend upon the soil for their subsistence. It compels the zamindar to proceed against the immoveable property first of all. And I venture to add that there are powerful reasons, in the experience of many Provinces, for establishing such a distinction; but in a

sense contrary to that which has guided the framers of the present measure. It is a vital point in the professional creed of most revenue officers in Northern India that few subjects require more cautious handling than the alienation of landed interests in execution of money decrees. It was in Northern India that changes of ownership were seen in the mutiny to have impaired the loyalty and good will of the proprietary body. The question began to be discussed in 1859, and a volume containing the discussions was published by the Home Department twenty years later. One result was the insertion in the Code of Civil Procedure of section 320 empowering the Local Government to prescribe rules for transferring to the Collector the duty of executing decrees in which land, or interest in land, is to be sold; and of sections 321-2 empowering the Collector to take measures in behalf of the judgment debtor to save the whole or part of the property from permanent alienation. Sections 321 to 325 of the Civil Procedure Code have been remodelled by section 59 of Act XII of 1879, but the object is the same.—To enable the revenue authorities to avert, in some measure, the evils attendant on the undiscriminating transfer of land. Section 305 of the Civil Procedure Code further lays down that when an order for the sale of immoveable property has been made, if the judgment debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or part thereof, the Court may on his application postpone the sale of the property comprised in the order for sale, for such period as it thinks proper, to give him an opportunity of raising the amount. Now, the Bill omits these politic and merciful provisions. It will be seen from section 286 of the Lieutenant-Governor's Bill and from paragraph 178 of the Report of the Commission that sections 305 and 320 to 325 of the Civil Procedure Code are not to apply to suits for arrears of rent. It is true that the Bill extends to such suits sections 326 and 327 of the Code, which permit the Court to authorise the Collector to stay the public sale of landed property and empower Local Governments to draw up rules as to sales of land in execution of decrees for money; and thus indirectly section 305, part of section 320, and sections 321 to 325c can be brought into play.* But if so, why not extend all these sections directly? It can hardly be meant that the power of the Local Government to transfer to the Collector the execution of decrees

Selections from the Records of the Government of India in the Home Department, No. CLV, circulated to Local Governments with Resolution No. , dated the 27th May 1879. 8vo. cir.

* See amendments in Act XII of 1879, secs. 30, 31.

for the sale of interests in immoveable property shall depend upon the order of a District Judge under section 187 of the Bill.

Act XIX of 1868, sec. 8

7. In Oudh, an under-proprietor is a person possessing a transferable and heritable right of property in land for which he is liable to pay rent. Under sections 124 and 125 of the Oudh Rent Act, no process in execution may issue against the immoveable property of the judgment debtor, other than attachment of such property, unless satisfaction of the decree cannot be obtained against his moveable property. The interest of an under-proprietor may be brought to sale; but the Deputy Commissioner has authority to intervene, and may be appointed manager of the property. Under the Oudh Laws Act no ancestral property in land may be sold in satisfaction of a decree without the sanction of the Chief Commissioner; and before acquired property in land can be so sold the permission of the Divisional Commissioner must be obtained. Similarly, in the Punjab no land paying revenue may be sold in execution of decree without the sanction of the Commissioner of the Division, and no hereditary or joint acquired property in land without the previous sanction of the Chief Court. In the North-Western Provinces in the execution of any decree for the payment of arrears of rent or revenue or of money under the Rent Act, the judgment creditor must proceed first against the person or moveables of his debtor, and only against the immoveable property in the last resort. Even then, if such property be a *mahal* (practically an area separately assessed to land revenue) or a share of a *mahal*, the law is exceedingly careful to avert sale if this can possibly be done. The usual expedients of mortgage, partial sale, and temporary alienation are indicated; and if the Collector deems that the auction is inevitable, he must still seek the sanction of the Board of Revenue, which may then urge further endeavours for the recovery of the debt without sale if it sees any hope of a successful issue. The Famine Commission cites with approval the provisions of the Deccan Ryots Act that no agriculturist can be arrested or imprisoned in execution of a decree for money, and that his immoveable property may not be attached or sold unless it has been specifically mortgaged, the management of the property by the Collector being the substitute for attachment and sale. If that Act is found to work satisfactorily in practice, the Famine Commission

Act XVIII of 1876, sec. 20. Major Erskine informs us that this rule applies to the cessation of suit decrees.

Home Department Selection, No. CLV, page 96.

Punjab Government Notification No. 2850, dated the 3rd October 1877.

Act XII of 1881, secs. 171-7.

Report of the Famine Commission, Vol. II, pages 124, paras. 14, 16. See also *ibid*, page 122, para. 10.

holds that the principles embodied in it might with advantage be applied in other parts of India.

8. I do not know whether it would be contended that the transferable occupancy right under the present Bill is not "immoveable property" under section 305 of the Civil Procedure Code, or "any particular kind of, or interest in, immoveable property" within the meaning of section 320 of that enactment. I am not concerned with the merely legal aspect of the question. If it be said that the law, correspondence, and arguments to which I have referred apply primarily, if not altogether, to alienations of ownership and not to alienations of tenant-right, I reply that, substantially, if the main principles of the Bill be accepted, the occupancy ryot will have a sub-proprietary right; and that, apart from economic expediency, the best justification for those main principles is that the ryot of Bengal is, or ought to have been, identifiable with the peasant proprietor of the Punjab or the Deccan. But if that allegation be traversed, I still maintain that there is the plainest distinction between a decree for arrears of rent and an ordinary decree for money. In the former case there is, in most parts of India,—I say nothing here of Eastern Bengal,—a much greater probability than in the latter that the reason why the debtor fails to pay is because he cannot do so, and that without fault of his own. The means of the Indian peasant who tills for his daily bread are too often at the mercy of the rainfall. The Famine Commission, at all events, felt the force of this consideration; for it has recommended that relief should be given to tenants by suspension of the demand for rent in times of general failure of the crops, and that when a tenant is sued for an arrear, the Rent Court should have the power of deciding whether he is entitled by reason of some calamity of season, such as is recognised as a sufficient ground for suspending the landlord's revenue, to have the arrear suspended till the next harvest is reaped.

Measurement of lands.

9. *Sections 176 to 181* reproduce the law now in force without alteration; and their introduction is necessary because the provisions proposed by the Rent Commission for enabling the landlord to obtain a "settlement *jamabandi*" or rent-roll have been struck out. At present, and under the Lieutenant-Governor's Bill, if a person desiring to measure lands which

Digest, arts. 94, 95, 96.

Bill I, secs. 112-4.

he has a right to measure is opposed, or if the tenants refuse to attend and point out the land, he may apply to a Court to establish his right. When a landlord cannot measure lands because he cannot ascertain who are the persons liable for the rent, he may obtain from the Court a requisition upon the Collector to effect the measurements and record the names of the occupants, and may further apply for a record of tenures, under-tenures, and rates of rent. The Collector, if he cannot measure the lands and make his record, may declare the land to have lapsed to the applicant, subject to revision of such order if any person interested subsequently appear within fifteen days and show good cause for his previous default.

Suits against Agents.

10. *Sections 182 to 186* stand as drawn in the Bill of the Commission, and are fully explained in paragraphs 171 to 173 of the Report. The law has been extended to the case of agents who receive rents at head-quarters, and in other respects has been rendered more precise and effective. If the landlord can ascertain the exact sum of money or specific accounts or papers in the hands of the agent, he is to sue accordingly; if not, he may ask the Court to take an account and to decree the payment of any sum found due, and the delivery of the papers, &c. The agent may contest the application; and if he is required to file an account, the landlord is allowed a reasonable time to examine it and raise objections. The other provisions are merely ancillary.

Digest, arts. 76, 92, 250.
See also Oudh Act XIX of 1868, secs. 83 (3), 121; and North-Western Provinces, Act XII of 1881, ss. 93 (6).

CHAPTER XVIII.—OF THE PROCEDURE IN SUITS FOR THE RECOVERY OF ARREARS OF RENT, &c., AND CERTAIN OTHER SUITS.

Bill I—Sections 155-225.
Bill III—Sections 187-247.

* [References.—*Rent Papers*—I, pages 77-81, 91, 93-4, 181-203; II, pages 219, 636, 240, 241, 244; III, pages 451, 482, 493, 495, 508, 530, 542, 585-8, 595, 598, 602, 605, 611, 614, 639, 659, 748, 659, 661, 668, 675, 677, 701, 726-7, 729, 732, 744, 768, 789, 853-60, 874, 1009, 1028, 1056; IV, pages 7, 8, 27, 88-122, 883-5, 955-70.]

1. It would be a tedious and unprofitable task to examine here the details of the proposed abbreviated procedure. Assuming that the arguments in paragraph 174 of the Report will be accepted, that the danger of summary methods of justice will be recognised, that truth must be elucidated by time and patience, that arbitrary and abnormal presumptions and the exclusion of evidence will be regarded as retrogressive and unsafe expedients, and that the plan of a summary trial to be followed by a regular suit will be allowed to be a system not of "administering justice but of choking off litigation," I propose to enquire, *first*, whether, in these circumstances, it is worth while to attempt to shorten the usual procedure at all; and *secondly*, if so, what are the main objections raised to particular portions of the procedure proposed by the Commission. In the *third* place, I shall venture, with much diffidence, to offer some remarks on the difficult question of avoiding incumbrances at Court sales of immoveable property. There are some further points which might be considered, but I shall avoid them as leading to minute detail.

2. The general idea which guided the Commission seems to have been to take the procedure of a Small Cause Court, as far as possible, as a model; and the principal means of abbreviation employed are (*a*) the relaxation of the requirement that the whole of what each witness says must be taken down at full length, the judge being merely directed to make a memorandum of the substance of the evidence, and (*b*) the abolition of appeal where the amount claimed does not exceed a certain value and no question of the right of varying or enhancing the rent is involved. The suits to which the procedure is to be applied are suits for arrears of rent, for ejectment, for the

Bill III, sec. 218.

Bill III, sec. 242.

recovery of the possession of land, for damages on account of illegal exactions or the refusal of receipts, and suits to compel registration. It will be convenient to follow the analysis presented in paragraph 176 of the Report, where the Commission summarises the differences between the scheme recommended and the Code of Civil Procedure. But I should first mention that the Lieutenant-Governor has accepted the proposals of the Commission with only two alterations of any consequence. He has raised the limit of value in non-appealable cases from Rs. 10 to Rs. 50, and he has provided means for preventing the avoidance of incumbrances on the sale of certain large occupancy holdings which, in some degree, resemble tenures.

3. (1) The Commission excludes the portions of the Civil Procedure Code relating to discovery, inspection, interrogatories, and affidavits; to security for cost; to suits by paupers and Aliens and by and against foreign and Native rulers; to interpleader; to receivers; to arbitration and proceedings on the agreement of parties; to negotiable instruments; and to public charities. On this it may be observed that a good many of these provisions would never be applied in rent suits; that the object of some of them is to shorten the trial; that presumably none which depend, as a large number do, on the discretion of the Court would be applied unless the interests of justice so required; and lastly, that when any of these provisions are really necessary, they can be applied under the Bill. On the motion of any party to the suit, the District Judge may direct that it shall be tried under the Code of Civil Procedure. The abbreviation thus consists in this, that certain provisions not usually or often utilised in rent suits will sleep, unless any party to the suit has just cause for awakening them, in which case they will be active; but the party is delayed by having to seek, in the first instance, an order from the District Judge.

Bill III, sec. 187.

Bill III, sec. 195. Compare Oudh Act XIX of 1868, sec. 119; Bird Papers III, page 689 for also case cited by Magistrate of Bhagalpur, Bird Papers III, page 850.

4. (2) The summons is to be for the final disposal of the suit. Mr. Anderson's experience is, that it is necessary to calculate on two hearings in rent cases, and he implies that parties will not add to the costs by bringing up witnesses before they are certain what they have to prove. Under section 68 of the Civil Procedure Code it is in the discretion of the Court to determine, at the time of issuing the summons, whether it shall be for the settlement of issues only or for final

disposal. Mr. Nolan observes that under section 154 of the same enactment Courts have power to deal with cases at the first hearing, if no injustice is likely to result. "It seems unnecessary," he adds, "to give power to decide at the first hearing where such a course is not consistent with justice." The Commission, it need not be said, does not propose this. On the contrary, the precise rules for adjournment in section 210 give the Court ample power to defer the case for sufficient reason. Perhaps, it will be thought that, in practice, the operation of section 210 will not materially differ from that of section 156 of the Civil Procedure Code, which it supersedes; but if so, it may be rejoined that the section of the Bill is supported by the analogy of sections 136 and 137 of the North-West Rent Act. The Rent Commission is satisfied that, if the subordinate Courts do their duty, 90 per cent. of rent suits can be properly disposed of at first hearing.

Rent Papers III, page 726.

Act XII of 1881.

5. (3) Under section 110 of the Civil Procedure Code either party may tender a written statement of his case, which the Court is bound to receive. Under the Bill (section 206) the defendant only may file a written statement of his defence. It is questionable whether much time will be saved, as the plaintiff must file a plaint and the Court may call for written statements when it pleases.

Bill III, secs. 198-200.

6. (4) The Court is to begin by interrogating the parties, so that its attention may be fully roused at once. It is some years since I tried a judicial case, but my impression is, that this practice is not unusual with experienced officers in my own Province. The interrogation of the defendant and of each party in respect to the written statement of his opponent is, indeed, directed by section 117 of the Procedure Code.

Bill III, sec. 212.
Compare North-West Provinces, Act XII of 1881, sec. 22; and Digest, art. 208.

7. (5) According to section 184 of the Code when the judge does not himself take down the evidence, he has to make a memorandum of its substance. I cannot say whether the proceedings would be shortened in Bengal by dispensing with the fuller record which, in the Punjab, is simultaneously framed by the Native Court reader. My own experience, such as it is, would suggest that no time at all would be saved if the judge made any such careful memorandum as would be serviceable to a Court of appeal. The Native *shetadár* can be written almost as quickly as shorthand; certainly as quickly as the ordinary witness can collect his thoughts. No doubt where there was no appeal, and the judge was merely to make brief notes to refresh his

Bill III, sec. 214.
Compare Oudh, Act XIX, Schedule, clause 4; North-Western Provinces, Act XII of 1881, secs. 132, 133.

own memory, the disposal of the case would be expedited.

8. (6) There is some attempt to exclude questions of title as much as possible; but if the decision of such a question is necessary to the decision of a rent suit, it is to be tried and decided in such suit, and may then be tried and decided under the Civil Procedure Code over again. Possibly the provisions of sections 191 and 245 may go towards facilitating collections of rental; but it seems obvious that they will not save the time of litigants or the labour of the Courts, on the whole.

9. (7) If there is to be no appeal in suits for arrears of rent not exceeding Rs. 50, the time taken up in appealing will be gained; and it is well known that, as a rule, Courts do their work much quicker when it is not subjected to the check of appeal.

10. On the above scheme, the East Bengal Landholders Association remarks that the abbreviation consists in recording (*i.e.*, I presume, in shortening the record of) evidence. Mr. Oldham says that in the Santhal Parganas a Code has been specially provided for rent cases; "but it is found," he continues, "by experience that it does not further any system of summary trial, that it entails just as full a record as the ordinary law, and that speedy justice is no justice." Mr. Ravenshaw, Commissioner of the Burdwan Division, makes a suggestion which, it is submitted, might be worthy of very particular attention should the proposed Small Cause Court procedure fail or be rejected. He recommends that on any zamindar satisfying the Collector that the accounts of his estate are regularly kept and are to be relied on, the zamindar's name and that of his estate shall be entered in a register, with the result that he may thereafter give notice to the Collector under section 9 of the Public Demands Recovery Act, and that the arrears shall then be realised by the procedure therein prescribed. I have already referred to this procedure in previous Notes; but I may here repeat that it is already applicable in the case of arrears of rent due in respect of property under the charge of the Court of Wards, or managed by the revenue authorities in behalf of a private individual. The Collector makes a certificate of the amount of the arrears, specifying the name and address of the debtor; and such certificate as regards the remedies for its enforcement has the effect of a decree of Court. The ryot may deny his liability by petition within a month, and, if he has brought such petition,

[1] III, sec. 242.

Rent Papers III, page 565.

Rent Papers III, page 602.

Rent Papers III, page 629.

Note on Chapter VIII, para. 16, *supra*, page 72.
Note on Chapter IX, para. 6, *supra*, page 79.
Note on Chapter XIV, para. 11, *supra*, page 121.
Bengal Act VII of 1880, sec. 7, clause (7), secs. 8, 9, 10, 12, 18, 19.

contest the claim by regular suit within a year. With a field survey and an accurate record-of-rights, it seems probable that some such plan could be worked without hardship. Lord Ulick Browne thinks that the summary sale system of the *patni* Regulation would be the best means of expediting the recovery of rents. Mr. Nolan's remarks deserve to be cited :—

Rent Papers III, page 666.

Rent Papers III, page 726.

"In Bengal contested rent suits are the most complicated of all suits. On well-managed estates either such suits are not brought, or they are decreed *ex parte*. The cases with which we have to deal arise on the badly-managed estates, and are of the most troublesome character. The commonest, almost the universal, defence is, that the demand for rent is greater than what is due. The landlord supports his plaint by the evidence of men of the lowest character for veracity, and by accounts kept by those men in the lowest fashion. The ryot replies that the witnesses are perjured and the accounts are forged. In many cases within my knowledge it has been clearly proved that the suits brought were supported by accounts fraudulently kept for years with the intention of proving the rent to be higher than it was in reality; and these cases are typical. This is nowhere more true than in Behar. * * * Such being the general character of rent suits, I would leave them to be tried by the ordinary civil procedure to which the Courts are accustomed. Short cuts to justice may answer in an open country; but in one so embarrassed by obstructions of every kind, it is best to keep to the high road."

Mr. Beveridge, of Patna, Mr. Pratt, of Jessore, and some of the subordinate judicial officers of Patna are substantially of the same opinion. The Conference of the Zamindars, whose proceedings are reported by the British Indian Association, does not hesitate to say that the abbreviated procedure of the Commission supplies no simplification. "There will," the Zamindars believe, "be the same law's delay, the same room for legal technicalities, the same harassment, trouble, and expense, as now."

Rent Papers III, pages 760, 860.

Rent Papers III, page 1033.

II. On the other hand, Mr. Pratt, of Purneah, regards the provisions of Chapter XVIII as "good, so far as they go." Mr. Porch, of Maldah, would allow the procedure for trial, as distinguished from the procedure in execution of decrees, to stand as it is. Mr. Newbery, of Bhágalpur, does not presume to offer an opinion, but would accept the chapter on the strength of the legal reputation of one of its framers. The Collector of Faridpur sees no great difference between rent and money due on bonds. He thinks the chapter well contrived, and would extend the Small Cause Court procedure. Mr. Gun, of Rangpur, and Mr. Cochran, of Cuttack, express approval; and so does one of the subordinate judicial officers; but, in the last case, on the ground that the scheme does not make any material changes in

Rent Papers III, page 805.
Rent Papers III, page 889.

Rent Papers III, page 940.

Rent Papers III, page 811.

Rent Papers III, page 703.
Rent Papers III, page 864.

Rent Papers III, page 960.

Rent Papers III, page 1056.

Ouds, Act XIX of 1868, secs. 210-17, and Schedule D.
North-Western Provinces, Act XII of 1881, Chapter VI.
Madras, Act VIII of 1865, secs. 49-69.
Chutia Nagpur (Bengal), Act I of 1879, secs. 46-80.
Digest, arts. 185-220.—the Revenue Court's procedure taken from Act X of 1859.

See secs. 37, 137-42.

Act XII of 1881, secs. 182, 183, 189; see also secs. 103-20(iii) as to applications.

Bill III, sec. 242.

* Sirsa, Tirhút, and Shahabad.
† Rangpur, Jessore, Nadiya, 24-Parganas, Midnapur, Faridpur, Noakhálí, Mymensingh, Dacca, Tipperah, Chittagong. The High Court, however, omits Shahabad, Rent Papers IV, pages 403, 406, 408.

Rent Papers III, pages 882, 608, 726, 837.

Mr. Wise, Rent Papers III, page 639; the Board of Settlers, Rent Papers III, page 686; Mr. A. Smith, Rent Papers III, page 671; Mr. Wordsley, Rent Papers III, page 733; Mr. Gordon, Rent Papers III, page 709; collectorate judicial officers, Faridpur, Midnapur, Moorshedabad, Rent Papers III, pages 853, 858-9.

the usual system of judicial investigation. The Indian Association, representing the interest of the ryots, appears satisfied.

12. On the authority of the Commission and the Local Government, the Government of India will probably decide to accept this chapter, but perhaps without committing itself to any opinion as to the value of the general plan for the purpose in view. There are so many other matters of greater consequence which have to be considered on the present occasion, that the endeavour to shorten litigation does not seem worth a controversy. Efforts, more or less in the same direction, have been made by the Legislature in several Rent Acts. The foregoing abstract may suggest the conclusion that the only point of much importance, so far as the trial of suits is concerned, is the restriction of appeal. And here the Local Government has the support of precedent, and fortifies itself by special measures of an executive kind. Under the Chutia Nagpur Landlord and Tenant Procedure Act (Bengal), No. I of 1879, the Deputy Commissioner has final jurisdiction, both original and in appeal from Deputy Collectors, subject to a money limit of Rs. 100, in suits for damages in certain cases, for refusal of receipts, for arrears of rent, and against agents for money or accounts. In the North-West the judgment of a Collector or an Assistant Collector of the first class is usually final in suits under the Rent Act; but there is an appeal in certain specified suits if the amount or value of the subject-matter exceeds Rs. 100, or if the proprietary title to land has been determined between parties making conflicting claims thereto. The exercise of final jurisdiction under the Bill is to be entrusted only to officers specially empowered by the Local Government, and selected Munsifs have been appointed solely for the trial of rent suits and Small Cause Court cases in three Behar districts* and in eleven districts of Eastern and Lower Bengal. Similar arrangements are contemplated in Hooghly, Bockergunge, and Purneah, but not at present elsewhere.

13. As regards objections to particular portions of the abbreviated procedure, the most noticeable relate to this question of appeal. The expediency of the final jurisdiction is questioned by the Chittagong Landholders, by Babu Joykissen Mookerjee, by certain Munsifs of Faridpur, and by Mr. Nolan. On the other hand, many officers thought the limit of Rs. 10 proposed by the Commission too low, and

proposed varying amounts from Rs. 20 to Rs. 100. If there is reason to suspect a "conspiracy to cheat with a view to enhancement," such as is mentioned by Mr. Nolan, it would be possible to bring the full procedure into play by an order from the District Judge.

14. Mr. J. F. Stevens, of Sáran, says, in reference to section 157, how the relation of landlord and tenant is to be proved. He thinks that questions of disputed title should not be touched at all, unless they are tried to the end once for all, and would therefore confine the summary procedure to cases where such relation is *admitted*. There are several opinions either against curtailing the record, or to the effect that in appealable cases the evidence should be taken down at full length.

Rent Papers III, page 778. See also Munsif of Mahaspur, Rent Papers III, page 859.

15. I venture upon the dangerous ground of the avoidance of incumbrances, partly because sections 201 to 213 of the Bill of the Commission have been more discussed than any other portion of the present chapter, and partly because the object of the Commission is to prevent hardship to innocent persons. The inherent difficulty of the subject seems to be heightened by the circumstance that there are three distinct procedures for the sale of immoveable property under the Bill—*viz.*, (1) summary sale in accordance with the old *potni* Regulation (Chapter XVI); (2) sale in execution of decree in accordance with the Code of Civil Procedure, but with certain omissions (section 236); and (3) the procedure for the sale of tenures, under-tenures, and holdings in execution of decrees for their own rent (sections 223-35). It is with the last case that we are here concerned.

East Bengal Landholders, Rent Papers III, page 566; Government Pleader, Mílanpur, Rent Papers III, page 660; subordinate judicial officers, Guya, Rent Papers III, page 800, Faridpur, Rent Papers III, pages 827-8.

Bill III, secs. 223-35.

16. Paragraphs 185 to 188, inclusive, of the Report and the deliberations at pages 218-19 of Vol. II of the Rent Papers should be read. Mr. O'Kinealy "denounced the present system as one for legalising fraud," and "the general sense of the Commission (Mr. Field and Babu Peary Mohun Mookerjee dissenting) was in favour of protecting under-tenures, so far as this could be done without endangering the reserved rent of the landlord, and also without exposing the purchaser to the risk of having a variety of private and unknown incumbrances brought forward as soon as the sale was completed." Certainly to one unaccustomed to this mode of disposing of property it seems far from equitable that *A*, an under-tenure holder, should "lose the right to hold possession of the land and to collect the rent of the ryots," because *B*, the tenure-holder above

Maharaja of Burdwan, Rent Papers III, pages 334-5, on Regulation VIII of 1819 ; Preamble to Regulation XLIV of 1793.

him, has failed to pay his rent. However justifiable such a provision may have been sixty or ninety years ago, when purchasers may have been more rare, or when it was imperatively necessary to maintain the working of the Permanent Settlement, there will in all probability be no objection to the reconsideration of the law at this date, if it can be shown that some fairer arrangement is practicable.

17. Influenced by the motives alluded to in the first part of the preceding paragraph, the Commission and the Lieutenant-Governor propose to protect certain registered incumbrances by providing that the tenure or under-tenure shall first be put up to sale subject to incumbrances, and, if the bidding covers the decree and costs, shall be sold forthwith. If not, the property may be put up to sale again at a later date free from incumbrances. Specified persons interested may save the incumbrances by payment into Court before sale, and may recover the amount so paid from the defaulter. As a rule, occupancy holdings will be sold free of all incumbrances at once ; but, as already said, the Lieutenant-Governor has taken power to direct that certain large holdings of this class shall be dealt with as tenures.

18. It will be observed that the principle of this procedure is not extended to summary sales under Chapter XVI, and that, in details, there are many differences between the provisions of that chapter and the provisions here discussed, notwithstanding the identity of the object in each case, which is to realise an arrear of rent by the public sale of a landed interest. The East Bengal Landholders point out that the summary sale under section 159 will invalidate the incumbrances, but that the sale of the same tenure under a decree will not have a like result. Their object is to maintain that the opportunity of saving the interest by payment is sufficient protection to the subordinate holders without resort to the system of double sale ; but they urge that there is neither any authority nor any just or sound principle to support this distinction in the Bill. Mr. A. Smith, Commissioner of Orissa, apparently regards the distinction in the same light ; for he thinks it would be advisable to extend the provisions regarding protection to incumbrances to sales under Chapter XVI.

Rent Papers III, page 850.

Rent Papers III, page 977

Rent Papers I, page 32

19. A good deal is said in the papers on these proposals of the Commission ; but the adverse remarks for the most part add little or nothing to the considerations advanced by a dissenting member of the Commission, Babu Mohini Mohun Roy.

It is apprehended that the procedure which, all must admit, is complicated, will lead to litigation and will delay decree-holders in execution of their decrees. Fraud is, in some quarters, anticipated, and it is said that the scheme will be inoperative, because at the first sale no bidders will be found. Mr. MacDonnell adduces a new argument; he may not have observed how considerable are the opportunities given to subordinate holders to protect their rights; but he regards the system of sale carrying with it the avoidance of incumbrances as a premium on the continuance of *tikka-dari* in indigo-planting. If the planter obtained a lease from the occupancy ryot, the latter might collude with the zamindars, fail to pay his rent, bring the holding to sale, and avoid the lease of the planter. Thus direct dealings with the ryot would be hampered with greater difficulties than at present. A proviso in section 232 is directed against fraudulent collusion with the judgment-debtor for the purpose of disincumbering the property; but Mr. A. Smith observes that such collusion, though common enough, is difficult to prove; and in the case put by Mr. MacDonnell, the purchaser might be ignorant of the real cause of the sale. Babu Mohini Mohun Roy further thinks that in some cases incumbrances and intermediate tenures have multiplied to an abnormal extent, so that their extinction is urgently required; and he instances Backergunge, where there are as many as thirteen persons having successive interests in the land inferior to that of the zamindar. But if it is acknowledged that the avoidance of incumbrances, on its present footing, does work injustice, it cannot be seriously contended that an inequitable system should be maintained for the sake of simplifying the tenure of property. Mr. Mackenzie observed at one stage of the discussion that he would give protection to under-tenures, but would allow the purchaser of the superior tenure to enhance if the rent were shown to be insufficient. To a person unfamiliar with Bengal revenue business, this seems plainly the right thing to do. But the Bill, whilst rendering the tenures voidable at the summary sale in all cases, and at sale for arrears of rent in satisfaction of a decree if the amount of the judgment-debt cannot be realised by a sale with incumbrances, declares the purchaser under either procedure to be at liberty to enhance. It is to be hoped that this privilege, taken with the change in the limitation law, which will compel him to exercise his option within a year, will have

East Bengal Landholders, Rent Papers III, page 395; Mr. Sherwill, Rent Papers III, page 646.

Final Result of Nuddea, Rent Papers III, page 660.

Second Result of Bhauga, Furidpur, Rent Papers III, page 668.

Government Pleader, Midnapur, Rent Papers III, page 669.

Rent Papers III, page 744.

Rent Papers III, page 627.

Rent Papers II, page 210.

Bill III, secs. 159, 232.

the effect of maintaining the tenures as a general rule. For the reasons above indicated, and for that stated by Mr. Reynolds, *viz.*, that the purchaser should not be allowed to keep the sword hanging over the heads of his tenants, it will probably be thought that the plea for extension of time put forward in several papers has no validity.

Rent Papers III. page 269 Chittagong Landholders. Rent Papers III. pages 442, 443. Raja Promothonath Roy, Rent Papers III. page 497; Sonaul Manjhi of Bauagra, Vernacular, Rent Papers III. page 509; Babus Peary Mohun Mookerjee and Mahini Mohun Roy, Rent Papers II. page 344.

26. In comparing this chapter with the Code of Civil Procedure and other parts of the Bill, I have come across a good many points in which it might be advisable to suggest some amendment. But these are all details with which it would be inexpedient to cumber the present Notes. I would only mention that it may be doubtful whether the operation of the sections of the Civil Procedure Code which relate to arbitration should be excluded in rent suits. The exclusion of Chapter XXXVII of the Code is disapproved by one or two subordinate judicial officers. Section 74 of the Madras Act for the Recovery of Rent expressly directs that the provision of the Code of Civil Procedure as to arbitration shall apply to summary rent suits; and section 94A of the North-West Act permits all rent suits and applications to be referred, with the consent of the parties, to arbitration under sections 220 to 231 of the North-Western Provinces Land Revenue Act, No. XIX of 1873.

Madras, Act VIII of 1865.

C. L. TUPPER,

On Special Duty.

The 2nd December 1881.

MEMORANDUM ON THE RENT QUESTION IN BEHAR.

1. It seems desirable to enquire how far experience in the permanently-settled districts of the North-Western Provinces will suggest criticisms upon the proposals of the Bengal Government for dealing with the relations between landlord and tenant in Behar; and the following remarks are made in case such an inquiry should be instituted. I shall confine myself to the districts of the Patna Division, although portions of the Bhagalpur Division are, geographically, part of Behar.

2. The Patna Division consists of seven districts, and is constituted as below. The population returns are those of the recent census.—

District.	Area, in square miles.	Population.	Land Revenue	Population per square mile.
			Rs.	
Patna	2,078	1,790,649	14,70,583	864
Gaya	4,712	2,037,980	14,15,416	432
Shahabad	4,383	1,941,653	17,41,602	443
Darbhanga	3,336	2,575,996	8,12,840	773
Muzaffarpur	3,004	2,589,524	9,73,401	862
Saran	2,625	2,201,212	12,50,922	841
Champaran	3,531	1,708,475	5,12,995	483
Total ...	23,670	14,936,525	81,77,789	631

Broadly, the tract comprises more than 23,500 square miles, with nearly fifteen million inhabitants. Population is thus extremely dense, but the country generally is fertile. It is roughly divisible into the North and South Gangetic regions, the former including Saran (a triangular expanse between the Gogra and the Gandak rivers as they converge on the Ganges), Champaran, and the two new districts of Muzaffarpur and Darbhanga formed out of the over-populated district of Tirhut after the famine of 1874. To the north-west of Champaran the submontane swamps and jungle known as the *tarai* fall within British territory. Between the Ganges and the Nepal frontier the country lies low, and is, in many places, indented with chains of shallow marshes marking the drainage-lines by which the local rainfall and the over-flow of the hill streams find their way to the Ganges. South of that river the alluvial plains of Patna and of the north of Shahabad blend with an inter-mediate territory presenting some of the characteristics of Central India. Thus there is the Kaimur plateau to the south of Shahabad, and the southern border of the Gaya District is fringed by hills. Parts of Shahabad are irrigated by the Son canals. The districts immediately adjoining the North-Western Provinces are Shahabad, Saran, and Champaran. The last marches with Gorakhpur, and the two former with the permanently-settled districts of Ghazipur and Mirzapur.

Hunter's Statistical Account of Bengal, Vols. XI, XII, and XIII—Introductions.

3. The Rent Law now in force in Behar is that generally in operation in the permanently-settled districts of the Lower Provinces. The substantive law, as between landlord and tenant, is that which was enacted in Act X of 1859;

but Act VIII (B. C.) of 1869 has transferred the jurisdiction in rent cases to the Civil Courts.

4. There is less sub-infeudation in the Behar districts than in Bengal Proper. According to the road cess returns, the percentage of sub-infeudation to land cultivated directly under the zamindar is calculated for the whole Province to be 64. In Chota Nagpore sub-infeudation of a certain kind is almost universal, because collections are made through headmen who retain a certain allowance out of the rental. In the Chittagong and Dacca Divisions the percentages of sub-infeudation are 80 and 79 respectively. In the remaining divisions the percentage is as follows:—

Bengal Administration Report for 1870-71, page 372.

	Percentage.		Percentage.
Presidency ...	73·5	Rajshahye and Kuch Behar ...	40·2
Burdwan ...	67·9	Patna ...	48·7
Bhagulpur ...	58·6	Orissa ...	49·2

The south and east are remarkable for what I may call the vertical subdivision of property, throwing it into the hands of a chain of middlemen between the cultivator and the zamindar. In the Patna Division there is less of this process than in any other part of the country except temporarily-settled Orissa. "Generally speaking," Mr. Reynolds tells us, "the zamindar either deals directly with the ryots, or at most there is only a single tiendar or middleman between him and them."* On the other hand, property is subdivided, so to speak, horizontally, by the familiar practice of partition to a much greater extent in Behar than in other portions of the Lieutenant-Governorship. "Excluding the Patna and Bhagulpur Divisions," says Mr. McNeile in his Memorandum of 1873, "in five districts only has the total number of partitions from the earliest dates back to which they have been traced (dates ranging from 1703 to 1837) respectively reached one hundred. These districts are Chittagong, Dacca, Midnapore, Balasore, and Cuttack; and the numbers of partitions in these districts have been 136, 119, 111, 157, and 615 respectively. In most of the Behar districts the numbers have been * * * much larger." The numbers are given in the margin. The total of estates on the Tirhút revenue roll in 1871-72 was 13,432, and the district, as then constituted, seems to have been rapidly tending towards almost as complete a system of "*petite culture*" as Sylhet or Chittagong. It follows that in Behar the estates are generally of smaller size than the zamindaris of Eastern and Lower Bengal; and there are other indications that the proprietary body is not so far removed in status from the better classes of the agricultural population as is the ordinary Bengal zamindar.

Memorandum on the Revenue Administration of the Lower Provinces of Bengal, page 86.

Patna	...	772
Gaya	...	208
Shahabad	...	402
Behar	...	1,709
Chumparun	...	
Tirhút	...	10,021
Bhagulpur	...	1,081
Monghyr	...	424
Purneah	...	19

5. At the same time there is a strong testimony to the depressed condition of the ryots. "Should you be of opinion," says Mr. C. F. Worsley, Collector of Muzaffarpur, in a report of the 9th October 1877, "that some of the remedies which I have suggested are of rather a drastic nature, I hope you will remember that I have served for fifteen years in Behar, and will believe me when I say that long experience has convinced me that the ryot of Tirhút is the most helpless and oppressed peasant I can imagine." Citations could be multiplied on the subject, but it is unnecessary to bring them forward here. Poor as the ryot may be, means are found to exact from him a remarkably high rental. The average rental in Bengal is valued at Rs. 965 per square mile, or about Rs. 1-8 per acre. In Patna, an acre of land would seem to pay, on the average, over Rs. 4 as rent.† On an examination of the road cess returns, Mr. Reynolds observes: "There are only nine districts in Bengal in which the valuation per square mile is as much as Rs. 1,200; and in these it varies

Bengal Revenue Proceedings, November 1874, page 255.

Bengal Administration Report, 1876-77, page 374.

Rent Papers IV, page 271.

* Rent Papers IV, page 276.

† Mr. Reynolds, excluding hills, forests, and uncultivated lands, computes that the incidence of rent on the land for which rent is actually paid cannot be less than Rs. 3 an acre.—*Rent Papers IV*, page 276.

from Rs. 2,100 in Burdwan to Rs. 1,310 in Chittagong. In Champáran, in which the proportion of waste land is exceptionally large, the valuation is only Rs. 742 to the square mile; but in the remaining districts of the Patna Division it ranges from Rs. 1,300 in Shahabad to Rs. 2,760 in Patna. Thus, not only does the highest valuation in Behar greatly exceed the highest valuation in Bengal, but in the Patna Division the land in every district (with the single exception of Champáran) bears a very high average rental compared with Bengal districts. The valuation in Gaya * * * is Rs. 1,500 per square mile; in Backergunge, a district far more wealthy and prosperous than Gaya, it is Rs. 1,400." Not only are the rents heavy, but they have also been enhanced much more rapidly in Behar than in Bengal during the present century. Indeed, there is strong testimony that "the great evil which calls for remedy in Behar is the arbitrary enhancement of rent at the will of the landlord."*

Mr. Finucane's estimate, Bank Papers III, page 682.

6. Apart from the incidence of the rental, the causes which depress the Behar ryot are partly traceable in (1) the system by which rent is collected, and (2) the system on which indigo cultivation is carried on.

7. Collections are made in some places in cash and elsewhere in kind or by appraisement. The ryots' holdings are divided into two classes—*nakdi* and *bhauli*. The *nakdi* tenures are known as *nakdi* proper or *chikbat*, *batbat*, and *kaathud*. Under the system of *nakdi* proper or *chikbat*, there is a fixed cash rent per bigah without reference to produce. The *batbat* tenure (from *bat*, ears of corn, and *batna*, to cut) resembles appraisement in so far that the cash rate per bigah is said to be determined on an inspection of the crop. In *kaathud* holdings there are fixed rates, but these are only leviable on the extent of land actually cultivated for a given harvest. The *bhauli* tenures are of two kinds—*agor-batai* (from *agora*, watching, and *bantna*, to divide) and *dánabandi*. In the first, the landlord sets a watch over the crop when ripe to see that none is made away with, and the shares are apportioned by actual division of produce; in the second, the standing crop is appraised by an arbitrator, an *amin*, the *patwári*, *gomashta*, and other village *amla*, and is then gathered by the ryot, who pays over the zamindar's share in kind or in cash, according to the price current. The main objections to the *bhauli* system are that in *dánabandi* the ryot is not properly represented, the zamindar's servants having it all their own way; in *agor-batai* the landlord can postpone the cutting of the crop, unless the ryot comes in to his terms, till it rots in the ground. These objections, however, are not exhaustive.

8. It is stated that the *bhauli* tenure prevails to a much larger extent in the districts south of the Ganges than in those to the north. Of the South Gangetic districts, Gaya has the largest proportion of *bhauli* lands. The proportion of *bhauli* to *nakdi* lands in that district is said to be as 7 to 1. According to one authority, in Shahabad the *bhauli* lands represent about two-thirds of the total cultivable area; and in Patna the proportion of *bhauli* to *nakdi* is as 1 to 2.† Mr. Reynolds, however, says that *bhauli* tenures are found in every district of Behar, but are most common in Patna and Gaya. He adds that the *dánabandi* system is by far the most usual.‡ In the districts north of the Ganges the *bhauli* lands are believed to represent a small portion of the total area. The proprietor usually takes half or nine-sixteenths of the produce. If there are fewer corn rents in Northern Behar, there is much more indigo. There is comparatively little indigo in Patna, Gaya, and Shahabad—scarcely any, indeed, in the two first named districts. The localities of indigo cultivation are Tirhút, Champáran, and Sáran. There is some evidence that the ryots are not so badly off in Sáran as they are in Tirhút and south of the Ganges; and that in parts of Shahabad, particularly in the large estates to the north of the district where Brahmans and Rajputs still retain some of the energy of resistance which characterises the village brotherhoods of Hindustan, the cultivators are not an oppressed class.

Bengal Revenue Proceedings, November 1876, pages 242-3, 260.
Also Bank Papers III, page 446.

* Bank Papers IV, page 272.
† These estimates must be regarded, I fear, as little better than guesses.
‡ Bank Papers IV, page 267.

9. The three systems under which indigo cultivation is carried on are known as *zeráti*, *asámiwár*, and *khushkí*, and may be briefly distinguished as systems of direct management, of enforced contracts, and of voluntary and independent cultivation, respectively. Except in the case of the third system, it is unfortunately the interest of the proprietors and the planters to combine for the purpose of sharing the profits of the indigo crop; it has further been a common practice to insist upon the cultivation of indigo whether the ryots wish to grow it or not. *Zeráti* lands correspond with the *khámár* or *nij-jot* lands of Bengal and with the *sir* of the North-Western Provinces. The idea is that they are cultivated wholly on behalf and at the risk of the proprietor with his own stock or by his servants or by hired labourers. "Under the *zeráti* system as rightly pursued," says the Collector of Muzaffarpur in a report of the 29th June 1877, "the planter cultivates with hired labour certain specific lands which have been leased to him by a zamindar for a term of years (usually seven) and which the latter had previously held in his own immediate possession. Such lands, termed *zeráti*, are rarely leased alone, but are usually made over to the planter with the general proprietary rights of the lessor, whose profits are mainly derived from the exorbitant rent paid for those rights. Under the *zeráti* system as wrongly pursued, the planter takes a similar terminable lease of proprietary rights, whether with or without private lands, and employs the powers hired from the zamindar for the purpose of confounding ryots' tenures and converting them into *zeráti* lands." Under the *asámiwár* system "the ryots of an estate which has been leased to a factory, in whole or part, are required to execute agreements for the cultivation of indigo throughout three-twentieths of their lands during the term of the lease." If they refuse, they run the risk of eventual ejectment or enhancement of rent, and have sometimes in the interval been persecuted by the factory subordinates. The cultivators are paid for the crop, but at unremunerative rates, which little more than cover the cost of cultivation. "This system," says Mr. Worsley, "is wholly indefensible, and is hated by the ryots." Where indigo is voluntarily cultivated by the ryots, under the *khushkí* system, in villages over which the planter does not exercise proprietary authority, "there are usually some special influences at work. These are (1) the promise by the factory of support against an oppressive *malik* (proprietor); (2) the offer of a large advance of money at a lower rate of interest than the *mahájan's* rates; (3) the pressure applied by factory *amlás*, who are frequently small zamindars of some local power and with local connections; (4) the necessity, where *asámiwár* or *zeráti* lands abound, of propitiating factory *amlás* and of protecting village cattle from vexatious seizures for trespass." The extent of *khushkí* cultivation is limited. The *zeráti* and *asámiwár* systems are included under the generic name of the *thikbándí*, or contract or leasehold system, which has been described as the curse of Behar.

10. The Behar indigo question has on several occasions been under the consideration of the Government of India, and reports on the subject were reviewed in 1868 and in 1877. The lawlessness exhibited and oppression exercised principally took the shape of illegal seizure and retention of land, of extorted agreements to cultivate, and of seizure of ploughs and cattle. A Planters Association has been formed with the object of checking these abuses, which are believed to have diminished of late years.

11. At an early stage of the present discussions it was perceived that the rent problem in Behar raised issues which differed essentially from those which were prominent in Bengal Proper. "In Bengal," wrote Sir Stewart Bayley in a letter of the 7th August 1877, "the primary want is a ready means of recovering rents clearly due, which are withheld either for the sake of delay, or in pursuance of some organised system of opposition to the zamindar. These defects are, no doubt, felt also in Behar; but there the most conspicuous deficiencies of the law are on the other side, and what is most wanted there is to provide some ready means of enabling the ryot to resist illegal distraint, illegal enhancement, and illegal cesses, and to enable him to prove and maintain his occupancy rights where the law gives them. Apart from the backwardness, weakness, and poverty of the ryots, the facts which tend most to support the

Bengal Revenue Proceedings, November 1878, page 228.

present state of things are the tediousness and expense of rent suits in a Civil Court, the corruption of process-servers, the entire absence of *pattahs* and *kabuliyats*, and the wretched system of keeping zamindari accounts, by which loose papers, written up in the course of a night, are the only documentary evidence which, as a rule, is put before the Court." These considerations indicated to Sir A. Eden the probability that some special rent law would be required for Behar, and he called for advice on the question. There was a general concurrence of opinion that measures were required to support the ryot in the rights and against the illegalities mentioned by Sir Stuart Bayley; and further, that ryots should be enabled to hold their lands subject to fixed conditions of tenure, should be certified exactly of the amount which they would have to pay for them annually, and should have at hand a trustworthy record of demands and payments. The Behar Committee, whose report is included in the Bent Papers, was thereupon appointed. In his final letter,* the Lieutenant-Governor observes that "even if no change were to be made in the substantive law of Bengal in respect of such matters as the occupancy right and the practice of distraint, some legislation would certainly have to be undertaken on these subjects in the interests of the Behar tenantry."

* No. 4897, dated 27th July 1883.

12. The remedies by which the Lieutenant-Governor would correct the evils above specified, and others which will be referred to below, are in part of general application and in part devised specially for the Behar districts. Without entering on any minute detail, I would class in the former category the limitations on enhancement and the proposals touching occupancy rights, measurements, receipts for rents, and distraint; in the latter, the survey and registration of *zerait* lands, the restriction of the authority of *thikadars* or temporary lease-holders, and the methods suggested for dealing with corn rents and commutation. It is to be noted that the special sections for Behar (Bill III, sections 74-92) were drafted by Mr. Reynolds after personal consultation with Behar officials and residents, and are supported by the Lieutenant-Governor provisionally, and subject to further criticism.

13. I will remark briefly on each of the remedies in the order in which they occur in the Bengal Government's Bill, reserving, however, for the last place, those which are peculiar to Behar.

14. (1) *Right of occupancy.*—The great proposal of the Bill is to confer upon every resident ryot a transferable and heritable right of occupancy in ordinary village lands, not to be defeated either by past or by future contracts. I need not repeat the limitations set out in section 19 of the Bill, by which the class of resident ryots is defined. Generally a ryot is said to be resident who has his fixed habitation for three years in the village in or near which he holds or cultivates land as a tenant. It is believed that this provision will secure the great mass of the cultivators against arbitrary eviction. If so, doubtless the ryots will be immensely strengthened in relation to the proprietors or those who act in combination with them or exercise their authority; for the ultimate penalty of ejectment must be one of the most cogent sanctions to which the latter can appeal. The Behar Committee says: "The amalgamation and subdivision of holdings in Behar, taken in connection with the zamindar's failure to give *pattahs*, have made it difficult for ryots who *de facto* have occupancy rights to prove the existence of such rights. An examination of the *jamabandi* papers (rent-rolls) of Behar estates has shown that, while sixty per cent. of the present ryots have held some land in the villages in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. Inasmuch as these ryots hold no *pattahs* or other documents showing which are the particular fields which they have held for more than twelve years, and which fields were subsequently acquired, it is doubtful whether any of them could, under the existing law, prove their occupancy rights, even where these rights exist beyond doubt. This is an evil which is due to the general failure on the part of the landholders to comply, with an obligation which the law has, from the earliest period of our rule, imposed upon them, namely, that of giving *pattahs* to their tenants specifying the boundaries and areas of their holdings." The Committee (paragraph 7) further believes that not one-fourth per cent. of the Behar ryots hold *pattahs*. In Shahabad there are *gazuttahs* and other holdings, which appear to be secured by

Commission's Report, para. 152.

a customary right of occupancy; and in the belief of several experienced Behar officers* occupancy rights dependent on village custom are widely prevalent elsewhere in Behar. Nevertheless, there seems to be no doubt that the Bill will effect very extensive changes, if only by way of recognising, strengthening, and preserving rights, which, though they now may exist, are undoubtedly precarious. It is alleged, and apparently with justice, that ryots' lands are now exchanged and the rent varied with the direct object of preventing the growth of occupancy rights; or, at least, that the village accountants manipulate the rent-rolls so as to prevent the identification of the plot held this year with the same plot held some years ago, thus suppressing proof of continuous occupation, and furnishing evidence of changes in the rates. The proposed statutory declaration in favour of resident ryots will tend to counteract such practices and will supersede, to some extent, the necessity for documentary proof of occupancy status.

Rent Papers III, pages 724, 727.

15. (2) *Limitations on enhancement of rent.*—The grounds upon which the rents of occupancy tenants may be enhanced have not been very materially altered. Broadly, the standard of rates prevailing in the vicinity is accepted; and a greater quantity of land or an increase, subject to certain qualifications, of its productive powers or of the price of produce will justify an increased rental. But the rates must be fair and equitable; Collectors may be empowered practically to discover and declare the fair *pargana* or prevailing rates; and the rates so found by Government officers are conclusively presumed to be fair and equitable within the meaning of the Bill, and may be enforced by suit against the tenants. Further, hard-and-fast lines are drawn which may not be overstepped. On *bhaoli* holdings (section 22) the rent must not exceed 50 per cent. of the gross produce in the case of staple crops. Where an enhancement of the rent of an occupancy ryot is claimed on account of the increase of the productive powers of the land, or of prices, the landlord is limited to half the increment obtained otherwise than by his agency or at his expense, the rent may not be more than doubled, and it must be proportioned to the increase by which it is supported. In all cases, except such as depend upon area exclusively, the enhanced rent is not to be more than one-fourth of the average annual value of the gross produce. The money rent of a ryot or under-ryot not having a right of occupancy is never to exceed 33 per cent. of such annual value. Mr. Edgar, an officer whose opinion is entitled to much weight, repeats the assertion, which I have already noticed, that the great evil of the past in Behar has been the constant enhancement of rent, and that this is the great danger of the future. He would fence enhancement round with the severest restrictions, and he accepts the limit of one-fourth of the annual value of the produce.

Bill III, section 33.

Bill III, section 21 (4).

Bill III, sections 181-44.

Bill III, section 24.

Bill III, section 30.

Rent Papers III, pages 781-2.

16. (3) *Receipts for rent.*—Landlords are bound to give receipts for rent containing full particulars. Every receipt which does not contain substantially the particulars set out in the Bill is to be deemed an acquittance in full of all demands for rent up to the date on which the receipt was given. It is said that ryots commonly complain, not only in Behar but throughout Bengal, that they are cheated in the zamindar's accounts by entries showing the demand as greater than it really is, and crediting payments in part satisfaction of the claim thus illicitly raised. The falsified accounts are then produced in Court with the view of obtaining what is substantially a decree for enhancement under the guise of a decree for arrears. This fraud is facilitated by the omission, in the receipts which are usually granted, to specify the year for which payment is acknowledged. The Behar Committee (paragraph 10) mentions that payments are, as a rule, credited to (*kist bakiya*) "current demand and arrears."

Bill III, section 40.

Rent Papers III, pages 720-2.

* Mr. Edgar (Rent Papers III, page 747), who ascribes the same view to Messrs. Macdonell and Worsley; and Mr. Finucane (Rent Papers III, page 807).

The year or years to which the payment is credited are not specified; and the receipts, written in a loose way on scraps of country paper in no specified form, are no guide to a Court in determining the amount of arrears due for any particular year.

17. (4) *Measurement.*—Measurement jungleery is a frequent cause of dispute in rent cases in Behar, as elsewhere. In particular, the measurement of a field for indigo with a pole of a different standard from that used in measuring it for rent, so that the bigah on which the ryot receives payment for his indigo should contain many more square yards than that on which he would have to pay rent, is mentioned as a serious abuse and a constant source of irritation. Section 68 of the Lieutenant-Governor's Bill, which applies only in suits between landlord and tenant, directs that measurement shall be made according to a Government standard to be converted into local measure if necessary, and provides for the determination of the length of the local standard pole. In several papers doubts are expressed as to the expediency of this section, and I refer to it in order to point out that general measurements by Government officials in uncontested cases, *vide litem motam*, are not contemplated. Landlords, however, are entitled, under section 67, to measure their lands; and in cases of contumacy, the Collector may intervene under sections 176-81, and enforce the measurement or conduct it himself. The Bengal Government does not intend that what we should call settlement measurements should be made, except in so far as it provides for the survey of *zerâit* lands, which will be noticed presently.

Proceedings, Revenue, Agriculture and Commerce Department, December 1877, Nos. 1-8, page 24.

Rent Papers III, pages 303, 722, 942.

18. (5) *Illegal cesses* are prohibited, as they have always been, by section 63. As the Behar Committee points out, the ryot cannot be prevented from voluntarily paying cesses over and above the zamindar's legitimate demand. Ryots, it seems, have frequently accepted a cess as a compromise, rather than enter upon a contest about enhancement or create a precedent which would raise the standard of the rent rates and support a fixed claim against themselves in all seasons, bad and good alike.

19. (6) *Distraint*, as it appears in the Government Bill, substantially amounts to attachment before judgment. The Rent Commission proposed the abolition of distraint, but the Lieutenant-Governor would maintain it in a modified form. Under the existing law, the person entitled to receive the rent of land immediately from the actual cultivator may exercise his power of distraint through agents entrusted with the charge of the property and others specially but privately authorised. The crops may be seized without application to any Court or Collector, but cannot be sold except by official order and after notice to the supposed defaulter, upon which he may sue to contest the claim. The Bill brings in official supervision at an earlier stage in the proceedings. Private distraint is prohibited. Application must be made in the first instance to a Court which may reject or admit it. If the application is admitted, an officer of the Court is deputed to distrain the crop; but the produce is then sold forthwith without time for inquiry into objections, unless the demand for arrears of rent and costs is paid immediately.

Field's Digest, articles 104-34.

Bill III, Chapter XIV.

20. I come now to the special provisions for Behar contained in Chapter XI of the Bill.

21. (1) *Zerâit lands.*—Power is taken to direct that a survey and register shall be made of the *zerâit* lands in any district or part of a district in Behar; and after the sanction and publication of the register, no evidence will be admissible to show that any unregistered lands are *zerâit*. The object is to check the encroachments of the zamindar (or *ihlwâdâr* exercising his authority) upon the *ryoti* lands, held as part of the ordinary village cultivation, and to curb the practice, more than once attributed to indigo-planters, but now said to be rare, of violently wresting from the ryots part of their lands, or of exchanging *ryoti* for *zerâit* lands, and then entering both as *zerâit* in the rent-roll. It is further thought that a specification of the lands which may

Behar Committee, para. 15.

Rent Papers IV, page 272.

properly be held as *zerait* will benefit the landholders, and tend to place indigo cultivation on a sounder basis. The Bill generally follows the Chotia Nagpur Tenures Act, No. II (B. C.) of 1869, which provided for the demarcation and registry of the *khainhari* lands held on privileged tenures by the descendants of the founders of the villages where they are situated, and of the *mankhas* lands, which were, perhaps, originally the share of the *mankhi* or headman, but are now subject to the immediate possession of the landlord or his assignee. The Act of 1869 did not apply to the *rijhas*, the Rája's share or usual village lands held on unprivileged tenures, and its working might have been more successful if it had been possible to effect a complete settlement under its provisions. The *khaishara* generally claimed their entire holdings as being all *khainhari*; but the inquiries could not extend to the *rijhas* portions of the holdings, and the disputes regarding these lands have thus survived the operations.

Bengal Gazette, Vol. XVI, page 377.

Bengal Administration Report, 1870-80, page 26-7.

22. (2) *Lease-holders or thikaddrs.*—It is declared that no lease-holder or farmer shall enhance the rent of any ryot, except on the ground of alluvion, or shall collect arrears.

23. (3) *Bhauli tenures.*—When rent is payable in kind or in the money value of a portion of the crop, the landlord or tenant may, in case of dispute, petition the Collector to depute an officer to divide or estimate the produce. The officer so deputed can then settle the case with three village residents as assessors. The section in the Bill (section 88) is copied from section 43 of the North-Western Provinces Rent Act, No. XII of 1881. Another section of the Bill directs that the *dánabandi* or appraisement papers are to be deposited in the Collector's office within fifteen days of the appraisement; and the tenant is secured in the possession of the growing crop, which he may harvest without the landlord's interference otherwise than by application to the Collector.

24. (4) *Commutation.*—Occupancy ryots are empowered to claim the commutation of kind rents into money rents on the basis either of prevailing cash rates or of the average value of the landlord's share of the produce, less a deduction for the cultivator's risk. The entire holding must be included in the claim.

25. I must reserve all criticism of the Lieutenant-Governor's proposals until I have completed my work in connection with the Rent Papers, and even then, if I venture to differ any opinion upon the difficult and complex questions which arise, I shall do so with the utmost diffidence. It is necessary, however, for the present purpose to point out what the Bill omits to provide, as well as to indicate its corrective provisions. The proposals above described aim directly at the prevention of "illegal distraint, illegal enhancement, and illegal cesses"; they would facilitate the proof and maintenance of occupancy rights; they would suppress or diminish many of the abuses connected with the indigo system and the systems for sharing the crop by division or appraisement. Except in so far as the extension of occupancy rights would obviate the need for written evidence of the relations between landlord and tenant, "they do not meet "the entire absence of *pattahs* and *kabuliyats*," or improve "the wretched system of keeping zamindari accounts." Admitting that the majority of the ryots will be able to hold their lands subject to fixed conditions of tenure, how are they to be certified of the exact amount of their annual rents; and, granting that receipts will acquit them for their payments, whence are they to obtain a trustworthy record of demands? It may be said that where the crop is shared, these questions are practically answered, because the proportions due to landlord and ryot respectively are known. But in North Behar, where ordinary cash rates prevail, it is obvious that the most satisfactory reply would be, if there were definitions in writing of the rates of rent and in maps, or otherwise by areas and boundaries, of the plots in respect of which such rates would be claimable.

26. It is a general principle of revenue administration that the several interests of the different classes in enjoyment of land shall be expressly declared, by one method or another, in documents accessible to the persons interested. In the Northern and Central Provinces this object is attained by means

of the settlement record-of-rights, which is presumed to be correct until error is judicially established. In the parts of Bengal subject to the Permanent Settlement, the same object has been continuously attempted, though with little success, by the repeated directions of the Legislature for the interchange, on the application of the ryot, of leases and counterparts (or *pattahs* and *kabuliyats*), as between the landlord and the tenant. It is remarkable that the present Bill abandons both methods. It rescinds the old law as to the interchange of *pattahs* and *kabuliyats*, and lays down no procedure for the preparation of a record-of-rights.

27. I shall mention presently how far the place of the *pattah* and *kabuliyat* is to be supplied in the proposed law; and the question is of some consequence, because the view that a clear record of proprietary and tenant rights and liabilities is much required in Behar, has the support of a considerable amount of evidence and of many opinions. Most of the Behar officials who were consulted in 1877 were in favour of making the interchange of *pattahs* and *kabuliyats* compulsory by law, and some further proposed that the registration of these documents should be obligatory. Mr. Toynbee characterised the want of written agreements as the question really at the root of most evils. Almost identical language was used by several others. "The root of the present evil," said Mr. Ward Jones, "is that the zamindar makes verbal arrangements with his ryots." Major Money repeated the phrase. "At the root of the present evil is, that ryots, not being given *pattahs*, do not know what their rights and positions are. *Jhardhs, khoorchas*, and *salámis* have become so numerous, that no ryot knows at the commencement of any one year how much he may be called on to pay in it." Mr. Malony, the Commissioner of the Division, thought that holdings and rights were at present so undefined, that it would be premature to declare them transferable. It appeared, however, that both zamindars and ryots had reasons for regarding written agricultural leases with dislike; each class feared that an express record might give the other some advantage over itself; the ryot might dread that the lease would raise a presumption against his occupancy-rights, and the zamindar might prefer verbal arrangements which he could repudiate or modify at pleasure. The rights claimed by the several parties were not those which either admitted. The dispute was chronic; and therefore the point at which an agreement could be set down in writing was never reached.

Bengal Revenue Proceedings, November 1878, page 228.

Ibid., page 252.

Ibid., page 269.

Bengal Revenue Proceedings, November 1878, page 232.

28. Whatever may be the obstacles to the general employment of written agreements, it is clear that the documentary evidence as yet available is for the most part worthless and too often forged. The Native Deputy Collector of Behar writes: "At present no *pattah* is given to a ryot; every year a new *loggit* (amount of rent payable by the ryots of a village) is made out. Every ryot is made to pay more or less rents, or to hold a smaller or larger quantity of land than what he did in the year previous." * * * "Since the introduction of the Income Tax, the Road Cess Act, &c., every zamindar keeps two sets of accounts now—one set for production before the authorities, and the real one for his use. This one never meets the eyes of public officers." "The *khatiani*," says Mr. Wilkins, Officiating Collector of Shahabad, "or ledger account of each ryot is written on small slips of paper, and can be altered a dozen times, if necessary, in the course of a night. The *jamabandi* is in no recognised form, and it is often in the power of the *patwári* to ruin either the ryot or the zamindar by raising or cutting down the rates, according as he is instructed by the one, or bribed by the other." The statements of Mr. Testro, Collector of Gaya, are to the same effect. "The Courts allow the zamindar to sue upon no better evidence than the *khasrah loggit* or the *dáobandi khasrah*—documents written and kept by the zamindar's *amla* and never attested by the ryot or any independent witness. They are written on slips of country paper, and can be very easily altered at any time without any probability of detection. The only proof the Courts require to establish their genuineness is the evidence of the *patwári* and the *gomashtas*, who are generally mere creatures of the zamindar and ready to depose

Bengal Revenue Proceedings, November 1878, page 140.

Bengal Revenue Proceedings, November 1878, page 244.

Bengal Revenue Proceedings, November 1878, page 247.

as he may wish. Thus placed completely at the zamindar's mercy, it is not wonderful that the ryot shuns the Courts. The Rent Law gives him a fairly good position, but he dare not assert it when the zamindar can at any time crush him with accounts forged for the occasion." At the time when these reports were written and subsequently, measures were in progress for improving the *patwári* agency in Behar. But in respect to the accuracy of the papers these measures absolutely failed. Reports of 1880 show that the *patwari*, who is only the nominee of one or a few among a number of proprietors, has no means of preparing a correct village account; that the *thikadárs* take care to conceal their profits and procedure from the zamindars, and therefore keep their own *patwaris*, furnishing to the *patwáris* recognised by the authorities rent-rolls so prepared as to suit their own interests; that such accounts as the *patwáris* produces have been only filed in the Government offices under great pressure; that no machinery exists for testing the accuracy of these papers; that no systematic attempt has been made to test them; and that the record rooms are thus cumbered with a mass of untrustworthy documents, delusively authoritative, because they are semi-official. As the Lieutenant-Governor pithily sums up the case, "the accounts filed by the *patwáris* are worth absolutely nothing, and consequently do more harm than good, and may be the means of misleading the authorities who attempt to use them as their guide." Under Regulation XII of 1817 the *patwári* is the nominee of the zamindar, but is required to perform certain public duties. His Honour is opposed to fresh legislation, and would leave the institution on its present mixed basis. The rule requiring the *patwáris* to file their accounts in Government offices has been cancelled, but they are to continue to keep up registers in prescribed forms.

House, Revenue and Agricultural Department Proceedings, Revenue, April 1881, No. 13.

29. The Rent Commission observes in paragraph 6 of its report that no portion of its Draft Bill depends upon the revival or maintenance of *patwáris*; and it adds that the Behar Rent Committee does not deem it desirable to incorporate the law relating to *patwáris* with the rent law. In paragraph 147 of its Report the Rent Commission practically anticipates the Lieutenant-Governor's decision above mentioned, and, dissenting from the Behar Committee, concludes that landlords should not be compelled to file their accounts in the Collector's office. The question of *pattahs* and *kabuliyats* is fully discussed in paragraphs 5 to 9 of the Report of the Behar Committee and in one of the appendices thereto. Paragraphs 7, 8, and 149 of the Report of the Rent Commission may also be read. It is accepted that the compulsory interchange of *pattahs* and *kabuliyats* might embitter the relations of landlord and tenant in Behar, provoke litigation, and involve an enormous increase in the number of registration offices and Civil Courts. The proposals of the Lieutenant-Governor will be found at sections 168, 189, and 217 of the Bengal Government Bill. Landlords and ryots may sue for a determination of the quantity of land held, and the amount of rent payable by the latter, and for a specification of the class to which the ryot belongs. It is intended that the decree in such suits shall take the place of a *pattah* or *kabuliyat*, as the case may be. Chapter VII of the Bill provides for the registration of successions to and transfers of tenures, under-tenures, and occupancy holdings, but only in the rent office of the landlord, not by any independent public functionary. Several officers question whether the procedure proposed in this chapter can, in practice, be carried out.

30. I am tempted to add to this long paper two graphic descriptions of the grievances of the Behar ryots, because they strikingly exhibit a state of affairs which, in a temporarily-settled Province, we should doubtless endeavour to correct by a field survey and a revision of the record-of-rights, even if there were no necessity for a revision of the assessment. In the opinion of Dhunesh Chunder Roy,* "the relation between the landlord and tenant is anything but satisfactory. In 20 cases out of 100 the ryot has no *pattah*; he does not know what amount of land he holds, or what rent he has to pay. Receipts are not regularly given, and the payments made by the ryot are not regularly credited in the accounts. The *patwári* writes his accounts in loose sheets, which enables him to alter them whenever he chooses, to serve his own or the *malik's* (proprietor's) purpose. Rights of occupancy are seldom recognised, and ryots

* Dated 1st October 1877.

Bengal Revenue Proceedings, November 1878, pages 230.

are ousted from their holdings whenever the *malik* chooses. Under the *dánabandi* system, the *malik* overestimates the crop, and thereby deprives the ryot of a portion of his legitimate share. Crops are illegally distrained, and ryots are not allowed to cut the crops till their rent is paid. Besides, a number of illegal cesses are levied from the ryots.

Bengal Revenue Proceedings, November 1878, page 240.

The Government Pleader of Gaya, who is to be a just man and himself a landholder of the district and a Bráhman or zamindar by caste, is even more vigorous in his description of the abuses. The law entitles the Behari ryot "to a *pattah* and receipts; yet he seldom, if ever, gets any. The law declares the exaction of *abwábs* as illegal; yet how numerous and heavy are the *abwábs* that we zamindars exact from him. His *mourasi* (hereditary) tenures are altogether exempted by law from liability to enhancement; yet how at each change in and transfer of the zamindari, and how often when he sets up his head against us, we, without regard to law or justice, add something to it every year. The law protects him against ejectment; yet how often, without any opposition from him or without resort to law and procedure, we turn him out of his and his father's land. It is illegal and a criminal offence to extort rent from by duress; yet our *gomashtas* and *barpháls* go and sit at the door of his house, preventing egress and ingress, and deprive him of the use of our village wells until he pays off our rent; and how frequently, for the same purpose, we bring him to our kutcherry and detain him there against his will until he satisfies our demands. The law has guaranteed to the ryot every right in property, and every facility to enjoy the fruits of his labour unmolested; yet meekly and quietly he submits to all the indignities and ill-treatment to which the zamindar subjects him, and suffers his rights to be thus infringed; and he seldom, if ever, thinks of going to Court for relief," the reason being that he is terrorised by the bundle of village accounts kept and manipulated by the *patwári* or *gomashta*. The fact is that the British system of administration postulates that rights shall be sharply defined and susceptible of judicial proof by clear evidence; where the relations of the parties are obscure, in proportion as the weaker men are unable to offer certain testimony in support of their claims, the strong and unscrupulous can use the law Courts, or rather the authority derived from the possibility of invoking their aid, as an irresistible instrument of oppression.

31. In the permanently-settled districts of the North-Western Provinces a cadastral survey and a revision of the record-of-rights are now in progress. The motives which led to these operations are similar to those which would suggest like proceedings in the Patna Division. The question was under discussion for years, but I will restrict myself to two quotations from the voluminous papers relating to it. Mr. Moens, Officiating Collector of Jaunpur, wrote on 12th September 1876: "The records that exist are mere *rechauffés* of the records of the re-measurement of 1800-05. The sooner these records are sold as waste paper the better for the people. There is hardly a zamindar who will not say that these records are *jhút* (false) from end to end. The maps are grossly incorrect. * * * * The *khewats* (records-of-rights in land) * * * were records of wrong rather than of right. Some I have seen were absolutely unintelligible either to the owners or to me, though I have had eight years' settlement experience. The *jamabandis* (rent-rolls) were fearfully incorrect, and not properly tested. Many zamindars took advantage of the opportunity to enter paper enhancements; many tenants, in collusion with the *patwári*, entered their rents at far less than the real amount. * * * Everything depended on which side the *patwári* took. The *khasrahs* (indices to field maps) were almost useless, as they recorded neither soil, crop, nor irrigation. In a word, the existing records must be regarded as what they are—utterly worthless." Referring to these statements, Sir John Strachey, then Lieutenant-Governor, was convinced that no satisfactory revision of the village papers was possible that did not rest upon a professional cadastral survey. "Until," he said, "such a revision is undertaken, it cannot be doubted that the peasantry will remain the victims of chicanery and oppression, and that our Courts will be systematically made use of for the perpetration of injustice. The political consequences of the continued misgovernment of so many millions of people are so grave, that, were

Revenue, Agricultural and Commerce Department Proceedings, January 1878, No. 4, Survey.

most of the survey four times what it will be, Sir John Strachey thinks it would
incumbent on the Government to undertake it, if funds could be obtained."

92. In the Patna Division the tracts in the neighbourhood of the Son
Canals have been cadastrally surveyed on
the 32-inch scale with the object of facili-
ng the administration of the canal revenues. Elsewhere, unless any special
surveys have been undertaken in Govern-
ment or wards' estates, it would appear that
e has been no regular field survey. It was urged in the Behar Committee that
ome districts landholders cannot themselves give the areas of the fields in
r estates, and it was replied that the sooner such landholders are compelled
to measure their estates the better both for
them and their tenants. The Division was
essionally surveyed, partly on the 4-inch and partly on the 8-inch scale,
ween 1841 and 1850. But this survey was apparently limited to the bound-
of villages and estates, and did not extend to a field measurement.

Behar Report, para. 9.

Administration Report for 1872-73, page

Administration Report for 1872-73, page

93. More than twenty years ago Sir Henry Ricketts, writing* on the
culties connected with the rent question in Bengal, contended that there
but one complete remedy, *viz.*, "to make forthwith a field survey and a
complete registry of all rights and interests
in the lands."

* On Real Difficulties in Bengal, and how to meet them." London, 1861, page 11.

Sir George Campbell in his Administration Report of 1872-73 (page 22)
rked—"A settlement and regular record-of-rights for all Bengal and Behar
enormous work which may be at some time attempted," and we have
r evidence of his views on the question. Commenting upon the then
proposed survey in the permanently-settled
districts of the North-Western Provinces,
Bernard said: "In the notes and correspondence on the subject I find no
ence whatever to the fact that the whole of Bengal and Behar and about
third of Madras are also permanently settled. In these Provinces contests
een landlord and tenant, agrarian trouble, and oppression of landlords
tenants, are more rife than in the districts of the Benares Division. So
s I am able to judge, a cadastral survey is even more wanted in these
icts for the good of the people than in the districts of the North-Western
inces. The want has been felt by Bengal officers and by the Bengal Gov-
ment. But they never ventured to ask that the General Revenues should
for such a survey. I recollect, when the matter was submitted to Sir George
pbell, then Lieutenant-Governor in 1871, he said that he could not ask for
dastral survey at the cost of the Empire, but must pay for such a boon,
never the people were ripe for such a measure." The question was brought
re Sir George Campbell by Mr. Bernard as Secretary to the Bengal Govern-
t, and the latter represented that the only possible basis for permanent and
factory relations between landlords and tenants in Bengal would be a cadas-
survey. Again, in reporting on the rent disputes of 1873 in Patna and
where, Sir George Campbell wrote that, however we might stave off, in
icular instances, the subject of the relation between landlord and ryots in
gal, he had no doubt that the time was approaching when it would be
ed on us. "If," he continued, "we make an attempt to settle any consider-
e part of it, we shall probably before long have the whole of it on our
ds, and shall scarcely be able to stop till we have in fact made a settlement
Bengal, adjusted and recorded all rights and all incidents of tenure, and
ated a machinery for perpetuating and continuing the record-of-rights and
ping accounts by public officers under a system such as the framers of the
manent settlement designed, but their successors wholly abandoned,—a
long, difficult, and expensive, but a necessary, process it will be."†

Revenue and Agricultural Department Pro-
ss, Bengal, August 1872, Nos. 29-30 K. W.

94. Nor has this aspect of the case been left out of sight in the present
sions. Sir Stewart Bayley, when dealing with the suggestion that the
exchange of *pattahs* and *kabuliyats* should be rendered compulsory instead
being left to the option of the ryot, observed: "It has been said that the
osal involves a complete resettlement of Behar through the Courts; and that

† Rent Papers IV, page 143.

a judge-made settlement, without any leading principle to guide the judges, will be a bad settlement, as well as an expensive process to all parties. Certainly I would very greatly prefer a settlement by the revenue officers, meaning by 'settlement' an ascertainment and record of the existing rights of every ryot and a decision as to them when in dispute. But such a settlement involves a cadastral survey of the whole Province to begin with, a staff of extra revenue officers, far stronger than that of extra Munsifs, which would be required by the alternative scheme. It would be a very expensive business, and would involve probably a decision in 100 cases, where the other scheme would involve it only in 10; for the advantage of the judge-made settlement, I take to be that the decision of a few cases in each estate would lead to a voluntary settlement in the rest, whereas in a regular settlement each dispute would have to be inquired into and decided. It would also throw the cost of the settlement on the country at large, instead of on the parties directly interested. Moreover, I am strongly of opinion that the Government of India would object to the legislation necessary to carry out a settlement by revenue officers, whereas they would not object to an increase in the ordinary action of the law Courts. None the less I admit that, in the interests of the Province and of the next generation, a regular settlement by revenue officers would be incomparably the more satisfactory measure of the two." A majority of the Behar Committee thinks that no action in the direction of empowering Collectors to effect a settlement in disputed cases is generally required in Behar. Except in so far that the preparation of Tables of Rates will involve inquiries such as are usually made in the course of settlement proceedings, Sir Ashley Eden's Bill would not give effect to the principle of the above suggestions of Sir Stewart Bayley. I may mention, however, that the institution of field measurements, the introduction of field registers and village accounts, and the restoration of the village accountants are measures advocated for Bengal by the Famine Commission at page 121 of Vol. II of its Report.

35. The cost of a field survey and a record-of-rights in the Patna Division would depend upon several factors, amongst which are the character of the survey, whether professional or of the ordinary settlement type, the size of the fields, and the scale of the measurements. The operations in the North-Western Districts were estimated to cost Rs. 165 per square mile for a professional cadastral survey on the 16-inch scale, and about Rs. 100 per square mile for the preparation of the record-of-rights. I have not been able to trace any information about the size of the fields in Behar, but it would probably suffice for a general idea of the outlay involved in measuring the fields and recording the interests in land to assume a rough average of Rs. 300 per square mile. Allowing for the Son surveys, the total cost may thus be set down at about 70 lakhs* or £700,000. This is less than a fifth of the annual value of the property, which is estimated for the purposes of the road cess at nearly 375 lakhs.*

Home, Revenue and Agricultural Department Proceedings, August 1879, Nos. 29-30.

* The valuation in the Road Papers III, page 902, is Rs. 3,74,4,476.

36. If any such idea is entertained, there would probably be no reason for imposing the whole of the charge upon the general revenues. In the North-Western Provinces half the cost of the cadastral survey and the whole of the cost of the revised record are defrayed from the *patwari* fund. Section 29 of the North-Western Provinces Land Revenue Act, under which this fund is raised, extends to the permanently-settled as to the other districts. The maximum rate of the *patwari* cess is 3 per cent. on the annual value; and this is practically about the same as the maximum rate imposed for the like purpose in the Punjab, which is 6¼ per cent. on the revenue, the latter being supposed equal to half the net assets. Three per cent. would, apparently, be a fair rate in Behar. *Patwári*'s fees are now levied, at all events in Muzaffarpur, at the rate of three pies in the rupee on the gross produce. Taking half the produce as equal to the rent, this is ¼ an anna, or 3¼ per cent. on the annual value. Three per cent. on the estimated annual value would yield Rs. 11,24,234 per annum, and pay for the operations in 6 or 7 years, even without assistance from imperial funds, and supposing the survey to be one of the expensive professional description.

37. Sir Steuart Bayley was in favour of bringing the *patwári's* fees collected in Behar into the Government treasury and disbursing them through the revenue officers to the *patwáris*, as is done in the North-Western Provinces. In the debates of the Behar Committee, Mr. Finucane suggested the extension to Behar of sections 23 to 35 of the North-Western Provinces Land Revenue Act (XIX of 1873) which would introduce the *patwári* rate and the system of fixed salaries. The Committee "seemed to be of opinion that it was desirable to abolish *patwáris* altogether, but no definite conclusion on this point was arrived at." Referring to the question of a *patwári* fund, a majority of the Behar Committee thought that it would not be expedient to impose any new cesses. As already mentioned, the Rent Commission and the Bengal Government do not deal with the *patwári* question in the Rent Bill. If fresh taxation is undesirable, it might be considered whether a proportionate and temporary reduction might not be made in the road cess whilst any *patwári* cess was at its maximum. Light fees might also be taken on applications or, as in the Punjab, charged on copies of revised records and maps when supplied to persons interested. The land registration proceedings in Chittagong are, it may be mentioned, self-supporting.

38. I would respectfully propose* that this paper be forwarded for remarks to two or three selected officers of the North-Western Provinces who have experience of the permanently-settled districts. It has unavoidably extended to some length because,—although the four volumes of the Rent Papers† might usefully accompany it,—my object has been to save the time of others by enabling them to advise on the present subject after reading merely this Memorandum itself and the material portions of the Lieutenant-Governor's Bill. At the same time the bulky Rent Papers should be at hand for reference, if necessary.

39. Without in any way suggesting the limits of comment, I may add that information upon the following points might probably assist the Government in coming to some decision upon the Rent Question in Behar:—

(1) Have there been circumstances in the relations between landlords and tenants in the permanently-settled districts (*i.e.*, Mirzapur, Ghazipur, Jaunpur, and Benares) analogous to those of Behar?

(2) Has inconvenience been experienced in dealing with questions between landlord and tenant from the want of an accurate record-of-rights? In particular, have tenants been prejudiced in the assertion and maintenance of their just rights by the absence of such a record?

(3) Is it correct—

(*a*) that the *patwári* cess was accepted by the proprietors in the permanently-settled districts without objection;

(*b*) that *patwáris* are on exactly the same footing and are, and subsequent to the present operations will be, required to perform the same functions in the permanently-settled as they do in the temporarily-settled districts of the North-Western Provinces;

(*c*) that the present operations extend to the record of all rights connected with land, including the interests of tenants with rights of occupancy;

(*d*) that rent rates are being ascertained by the methods employed in temporary settlements, but merely with the object of arriving at a valuation of the land for the purpose of assessing local rates;

(*e*) that rents are not authoritatively fixed by the settlement officers, except on application of parties?

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* This proposal has been accepted and carried out.—C. J. S.—5.12.81.

† In referring to these Volumes, I take leave to the following order:—I.—Vol. I of the Report of the Rent Commission; II.—Vol. II of the same Report; III.—Vol. III of the Report of the Bengal Government; IV.—Vol. I of the Report last mentioned. It is convenient to adopt a chronological order, and, in order of date and appropriate second Volumes of the Bengal Government's Report, should precede the final statement of the views of the Lieutenant-Governor. Bill I is the Draft of the Commission; Bill II is Mr. Reynolds' Draft; and Bill III the Draft of the Bengal Government.

(4) Can instances be adduced in any districts showing that the rent rates fixed by settlement officers for purposes of assessment or last valuation have been accepted by rent Courts in deciding questions touching the amount of rent as between landlord and tenant?

(5) Are any customary rights of occupancy, distinct from those which have been conferred or may be acquired under the written law, believed to exist in the permanently-settled districts?

(6) Can the proportion of the cultivated area held by tenants at fixed rates be stated approximately for each of these districts?

(7) To what extent is subletting prevalent amongst tenants with rights of occupancy? In particular, are tenants at fixed rates usually cultivators themselves, or do they sublet to others?

(8) Is it considered that the cadastral survey and the formation of a correct record-of-rights will materially improve the position of landlords or tenants, or of both; if so, what are the grounds for this opinion?

(9) Is there any feeling on the part of the proprietors that undue inquisition into their private affairs is involved in (1) the functions assigned to the *patwárís*, or (2) the present survey and revision operations?

40. It would further be desirable, in view of the statements made as to the rise in rents in Behar, to obtain a return showing the number of suits for enhancement brought against tenants with rights of occupancy in the permanently-settled districts during, say, the last five years.

C. L. TUPPER,

The 20th October 1881. *On Special Duty.*

Note on the Occupancy Right and Enhancement.

Abstract of Note.—§ 1: The occupancy right no novelty in India.—§ 2: Difficulties of the present subject. No local criticism of the final proposal as a whole.—§ 3: No comprehensive information about the Central Districts.—§ 4: No inquiries resembling those of the Bengal Tenancy Commission.—§ 5: The occupancy right should be generally recognised.—§ 6: Reasons for this view.—§ 7: Character of the scheme for giving effect to the principle of the Bill.—§ 8: Novelty of the scheme.—§ 9: Its origin. Discussions of the Commission.—§ 10: Sub-letting. Provisions of the Irish Act. Proposals of the Famine Commission.—§ 11: The discouragement of sub-letting is one of the objects of the proposed legal maximum for rents.—§ 12: Defects of the proposal if worked only through the Courts.—§ 13: It is, however, meant to be worked through the Collector's assessment.—§ 14: The revised law of enhancement and the table of rates should be brought into operation simultaneously.—§ 15: Positive checks on enhancement considered as principles of assessment.—§ 16: The positive checks on enhancement should be converted into executive rules for assessing rent-rates.—§ 17: Difficulties of assessment without measuring lands.—§ 18: The weight to be attached to tables of rates.—§ 19: Term during which the rates are to be maintained. Term proposed by the Famine Commission. Term enacted in the Irish Land Law.—§ 20: Other proposals for the enhancement of rents.—§ 21: Limit of produce-rents.—§ 22: Further considerations on sub-letting.—§ 23: Sub-letting has not been satisfactorily dealt with in the Bill.—§ 24. Transfer by Court sale.—§ 25: Transfer by private sale. In Behar.—§ 26: In Bengal Proper. The political objection. Objections in the interest of the ryot.—§ 27. Objections in the interest of the zamindar.—§ 28: The avoidance of collusion.—§ 29: Two main questions connected with the acquisition of the occupancy right.—(1) Will the law select the proper holders.—§ 30: (2) Will the zamindars be able to defeat the law?—§ 31: The proposal to make the land the basis of the right deserves discussion.—§ 32: The proposals of the Famine Commission.—§ 33: The same compared with the Bill.—§ 34: Advantages of a field survey and record of rights.—§ 35: Summary of suggestions.

Fixity of tenure cannot be considered apart from the question of a fair rent, because the instrumentality of a rack-rent may be used to destroy the right of occupancy. In whatever class or classes the occupancy right may be recognised, its incidents must be defined and some limitations must be imposed upon rental. It is, perhaps, needless to say that neither the right itself, nor some of the limitations which effectuate it, are any surprising novelties in India. There is no province under British administration where some occupancy rights do not exist; and wherever such rights are found, the revenue or the rent, as the case may be, is already limited by rules enforced either by executive or judicial authority. The question in Bengal is not whether fixity of tenure at fair rents is to be established as an institution heretofore unknown to the statute law; but, seeing that the statute law has already sanctioned this institution, the question is whether it should be strengthened and supplemented in the particular manner proposed in the Bill before the Government. The occupancy right no novelty in India.

2. Apart from the vastness and variety of the interests affected and the somewhat complex character of the scheme of the Bill, there are several circumstances which encompass this question, as now presented to the Government of India, with great—I may say with unusual—difficulty. One of these circumstances is that the final proposal, as a whole, has not been subjected to any local criticism. We have the arguments of the Lieutenant-Governor in support of his matured conclusions, but on some points there is no second opinion before us, and on others we have to elicit opinions sometimes indirectly, sometimes by why of inference or analogy, from a mass of papers written when the general idea expressly formulated for consideration was either radically different from that with which we have to deal, or when the alternative plans, approaching the design now substituted for that of the Commission, had not yet been fully developed. It is true that in circulating the Report of the Commission, the Lieutenant-Governor proposed[1], *first*, to declare that the right of occupancy, involving the obligation of paying rent according to the Collector's table of rates, should attach to all ryots holding lands for three years or more; and, *secondly*, to Difficulties of the present subject. No local criticism of the final proposal as a whole.

[1] Bust Papers I, pages 3, 4.

empower the Revenue authorities, or specially selected officers working with
district officers, from time to time to settle authoritative tables of rates
all districts or parts of districts, the application of the rates to particular holdi
being left, as a rule, to the Civil Courts. But, though the second of these
posals is substantially embodied in the Bill, care has now been taken to prev
the occupancy right from depending upon any prescription, save when vil
residence and tillage do not run together. Again, Mr. Reynolds' Bill, w
has been circulated to some selected officers, differs, where it treats of the
pancy right, in a good many particulars from the Bill of the Lieut.-G
Governor; and, at the time of circulation, the chapter relating to the tabl
rates had not been prepared.

No comprehensive information about the central districts.

3. Another difficulty springs from the obvious reflection that be
measures, such as are here contemplated, should not only be theoreti
expedient, but should also be opportune. There is a great deal of inform
in the possession of the Government of India about the relations of zami
and ryot in Behar, in Orissa, and in some of the eastern districts, such as Pu
where the rising of 1873 occurred. Of Behar I have already written at le
From Orissa there came some years ago much evidence of oppres
the part of the zamindars,—evidence so striking and conclusive that Sir
Campbell[1] pressed more than once upon the Government of India its
tion that nothing but a re-settlement, restoration, and record of rights could
the injustice existing in that province. The Government of India, how
from disinclination to disturb the renewal of the settlement effected in
and partly because the time was held to be unfavourable, refused its sanc
to this proposal.[2] Mr. Mackenzie's historical note[3] abundantly illustrates the
dition of the Dacca division, of parts of the Chittagong division, and of the so
eastern portion of the Rajshahye division. It also contains many extracts f
the Patna and Bhágalpur Reports. But there is a large tract of country, inclu
a good many districts in Central Bengal, as to which there is no detailed and
cific information. It is easy to see that the zamindars are too strong for the
in Behar and in Orissa; and that in those provinces the interposition
be that of a protector's hand. Nor is it hard to perceive that Eastern Be
is as exceptionally prosperous as Behar has been exceptionally depressed.
that where we have heard, at no very distant dates, of combinations to
the zamindars, of rent riots and of fire raisings, the duty of the State,
it intervenes, may oftener be to prevent contest between fairly well-mat
opponents, than to shield a helpless peasantry from systematic wrong.
what is the situation in that long and by no means narrow strip of co
from the borders of Jalpaiguri to the mouth of the Hooghly? What is the
state of the rent question in Dinájpur, Maldah, Moorshedabad, Birbhúm,
Bankúra, Burdwan, Hooghly, Midnapur? These districts are, indeed, mentioned
in some places, and I shall refer below to Dinájpur; but I have not been able to
find in these reports any definite and comprehensive answer to the above ques-
tion. We are left to infer that disputes connected with the relation of landlord
and tenant need adjustment in the centre no less than in the east and west.
But are the disputes as rife and as bitter in the Burdwan division as they have
been or are in Dacca or Behar? As I have already noted, it is not proposed to
deal with Orissa at the present time. Some discussion of the reasons for exclud-
ing Orissa from the measures now intended would have been welcome; possibly
the feeling may have been that there the real remedy would be a re-settlement,
and that the time for such a revision of the status of the tenantry has not yet
arrived. This, however, is now here said by the Bengal Government. For the rest,
I will mention one fact of some significance. Sir George Campbell took steps
to ascertain whether tyrannical practices, such as those of the Orissa zamin-
dars, prevailed in other parts of Bengal. The results obtained in 1873
showed[4] "that, in spite of the law, cesses in large numbers were levied from
ryots by almost every zamindar in the country."

No inquiries resembling those of the Beaubrough Commission.

4. The last difficulty I will mention is closely connected with that just
referred to. Almost all the reports take the form of a more or less detailed
examination either of the Bill of the Commission or of Mr. Reynolds' draft.
But I think any one devoid of personal acquaintance with Bengal must, in

[1] Rent Papers IV, page 146. [2] Rev. & C. Proceedings, January 1874, Nos. 24-32. [3] Rent Papers IV, pages 129-180. [4] Rent Papers IV, p. 140.

instances, distinctly feel the want of some such clear and comprehensive
unt of the present facts of local circumstance as we have received from
r in the papers of Messrs. Reynolds, Edgar, and MacDonnell. It is not easy
dge of measures which will affect the whole structure of the rural com-
ity from papers—often, I think I may not unjustly say, rather hurried
s—drawn up, probably under the pressure of current work, in connection
such a Bill as that of the Commission. Though the deputation of Mr.
olds certainly succeeded in eliciting some fresh and very important infor-
n about Behar—information which, in my humble judgment, should induce
Government to legislate without delay for that part of the country,—yet
proceedings cannot be compared—they can only be contrasted—with those
Bessborough Commission. The Bessborough Commission was appointed
ly 1880, and it reported in January 1881. In the interval, besides holding
ings at Dublin, it visited Belfast, Londonderry, Sligo, Donegal, Castlebar,
mmon, Galway, Limerick, Killarney, Cork, Skibbereen, and Clonmel. It
65 sittings, taking evidence at 61. We may fully acknowledge the very
value of Mr. Reynolds' notes, but it would, of course, be absurd to
them on the same level with the systematic report and detailed
lied by that Commission on the Irish land question. If it were
to deal with the Bengal rent problem, or with any definite section
the method of a field survey and a record of rights, I would
any further inquiries. Errors would be obviated by the
which would be amassed during the progress of the opera-
particularly if enough elasticity were left in the law to admit of its
to local peculiarities. But if the idea of a record of rights be
then, if I were asked, I could not take the responsibility of
the Government to sanction this Bill on the information now
I believe that the general object of the Bill is right, and that
principle is in accordance with the traditions and social feeling of the
of India to which it relates. But I am so unfortunate as to hold the opinion
the method on which the Bill has been prepared is a wrong one, and to
with those who have remarked that the final determination of this great
, now pending for nearly a century, should be preceded by an investi-
of present facts. If it be objected that the loss of time would be an
to the people, I would reply that I am opposed to all delay as regards
. I think a measure providing for some pressing matters in that
vince should be passed within the next few months. Symmetrical and
tific legislation for Bengal Proper might then proceed with that elabora-
which is the fruit of time. If it is urgently necessary to relieve either
dlords or tenants from some immediate evils in any districts outside Behar,
the Bengal Government point out those districts, and, if need be, the most
emergent wants might be met with promptitude. I do not find proof in these
reports that there is the same degree of urgency about the rent question in every
district. In any case a long time must elapse before such a Bill as that now
under consideration can be passed into law; and the interval might well be
utilised by extending without loss of time to Behar some of the remedies of
which it stands in very serious need. In fact, I think it would be wrong to
delay legislation for Behar till the numerous points which arise in connection
with this Bill for both Behar and Bengal Proper have been fully and finally
considered.

The occupancy right should be generally recognised.

5. If the Lieutenant-Governor's Bill did no more than declare that every resident ryot, duly paying his rent, shall not be subject to arbitrary eviction, I should feel none of the hesitation expressed in the preceding paragraph. I concur in the remark of Mr. MacDonnell[1] that if the historical arguments of Messrs. Mackenzie and O'Kinealy do not establish the point that *khudkásht* ryots have a "permanent hereditary right in the soil they cultivate so long as they continue to pay the rent justly demandable from them, with punctuality," that point is incapable of being established by research. The more I have studied these papers, the more have I become impressed with the conviction that this is a true interpretation of the customary or common law of the land. Nor have I any apprehension that to give to this principle the practical effect which Act X of 1859 failed to ensure will be in any sense a revolutionary

[1] Rent Papers III, page 736.

undertaking, or one which would seriously disturb existing relations in the country at large. I may add that I have examined the papers connected with the passing of Act X of 1859, and that I fully agree with what Mr. Mackenzie[1] has written on the subject. To confer the occupancy right by express legislation on all resident ryots would be, I think, no violation of the spirit of that enactment. Personally I am convinced that the introduction of the twelve years' rule was a mistake, and there can be no doubt that it has had a wholly unforeseen operation.

Reasons for this view.

6. I shall not attempt to detail the reasons which have led me to these conclusions, as to do so would exhaust the patience of the reader. I will only say that I have been much influenced by the manner in which this fundamental conception of the occupancy right was received by the local officers, both when it was implied in the idea of a three years' prescription, and subsequently when it was more distinctly presented in the Bill drawn up by Mr. Reynolds. The key-notes seem to me to be struck by Mr. Barlow,[2] Commissioner of the Bhágalpur Division, where he says that if arrangements could be made for settling rents so that zamindars could get easily the increased rents proposed for them by the present law, they would not really object to any extension of the occupancy right; and by Mr. Westmacott,[3] who avers that, under the three years' prescription, a ryot would have been hunted out perseveringly to prevent his occupying the same land for that period, but that the proposal to give every settled ryot a right of occupancy, though far more startling, is not open to the same objections. Another motive which prevents me from dwelling upon this part of the case is that I feel it to be useless to do so. The broad grounds of public expediency upon which the measure is supported are so obvious as hardly to need statement. A substantial peasantry, able to hold its own, and to resist famine and hard times, is what the country really needs. Moreover there is an act of justice to be done in effectually redeeming the pledges made, at the time of the Permanent Settlement, to protect the ryots from improper disturbance and exaction. The arguments of the zamindari party have been met by anticipation in the notes of Messrs. Mackenzie and O'Kinealy, which will be read; and if their able representations do not produce conviction, nothing would be gained by the feeble advocacy of a mere tyro in these discussions.

Character of the scheme for giving effect to the principle of the Bill.

7. The difficulties, however, which I think may be felt by the Government, begin at a further point. Granting that fixity of tenure is to be the rule, how is the occupancy right to be practically acknowledged? What are to be its incidents? What are the reforms required in respect to enhancement? The right of enhancement has, indeed, been affirmed by the statute law; but hitherto the commonest process of enhancement seems to have been the irregular and illegal practice of adding cesses to the rent, to be consolidated with the admitted demand as opportunity and the weakness or ignorance or exhaustion of the ryot might allow. What effective and regular process of enhancement is now offered to the zamindars, and how are their illegitimate methods of asserting reasonable as well as sometimes unreasonable claims to be suppressed for the future? It is when we come to seek the answers to these questions that we are confronted by a scheme possessing, indeed, some attractive symmetry, but nevertheless apt to strike an ordinary person, fresh to the subject, as curiously rigid and artificial. I except from this remark the proposals regarding the Collector's table of rates. The phraseology is novel, and the relation of those proposals to the rest of the scheme has not been adjusted in the manner that would probably suggest itself at once to almost any up-country settlement officer. But the ingenious distribution of functions between the executive and judicial staff, though, so far as I have been able to ascertain, new to the law, will probably commend itself to the judgment as really a very natural arrangement. It is not without precedent in practice, for it is well known that in the North-Western Provinces the rent rates found by the settlement officers for assessment purposes influence the decisions of the courts; and, again, the principle is not without previous acceptance, for the Central Provinces Tenancy Bill[4] proposes to empower the Chief Commissioner to frame rules from time to time directing that changes in the value of produce may be taken into account in

[1] Bent Papers I, pages 305-7, II, pages 389-3; IV, pages 229-33. [2] Bent Papers III, page 321. [3] Bent Papers III, page 309. [4] section 57 (3), Statement of Objects and reasons, paragraph 20.

fixing rents during the currency of a settlement, the idea being that the necessary local inquiries shall be made once for all under his orders.

Novelty of the scheme.

8. It may be useful to advert briefly to the origin of the scheme in the Bill during the proceedings of the Rent Commission. It will be remembered that the grounds of enhancement, which though in themselves limits on rent, may be distinguished from the less accustomed restrictions now added, do not differ much from those laid down by the present law. It is hardly an exaggeration to say that the rest of Chapters III and XV of the Bill is new. Where an existing rule has been retained, its setting has been altered; and the whole idea embodied in these chapters must be seized at a single grasp as constituting the centre-piece of the mechanism of the Bill.

Its origin. Discussions of the Commission.

9. Mr. Field, in the note on the enhancement of rent appended to his Digest, had enunciated the theory that at the beginning of the century the well-known mode of enhancement by periodical measurement and assessment was left intact, and his general view was that the whole course of legislation up to 1859 had recognised the right of enhancement of money rents as residing in the zamindars, and had afforded them every legal facility for putting it in operation. Sir Richard Garth,[1] on the 8th January 1880, when the notes of Messrs. Mackenzie and O'Kinealy were not yet in existence, generally agreed. It was soon admitted that "on a correct construction[2] of the Regulations and Acts before Act X, no landlord was legally entitled to raise the rents of any village ryots above the *pergunnah* or customary *nirikh* or rate;" but Mr. Field[3] still contended that a re-adjustment of money rents by periodically raising the *pergunnah* rate had been contemplated, though he allowed that it had fallen into disuse, the imposition of illegal cesses being utilised as an easier method of attaining the desired result. Mr. Mackenzie denied[4] that the authors of the Permanent Settlement found any such plan of periodically settling or establishing *pergunnah* rates by a measurement and assessment in existence; and he made his proposal[5] for a three years' prescription on the ground that the intention of the Select Committee on Act X of 1859 was not to change but to elucidate the law, and that it was the duty of the Rent Commission to give effect, as far as might now be possible, to that intention, and to restore the provisions of the old law. Mr. Field[6] rejoined that the old law was most uncertain, and that its restoration was an almost impossible task. He did not altogether admit the indictment against Act X of 1859, that it had seriously injured resident ryots by placing them in the position of tenants-at-will in respect of all lands as to which they could not prove 12 years' continued occupancy (a proof which, I may remark in passing, must always be exceedingly difficult to adduce in a part of the country where there are no field maps of holdings). He held that the measure of the mischief done by Act X was that people came to consider the Act to be a complete code, and that litigants in consequence made no effort to give evidence of customs. The new Bill proposed to save customs expressly, and this he appears to have regarded as sufficient. Mr. Harrison[7] now brought into the arena of discussion a new argument and another theory. It would be impolitic to leave the rights of the unprotected resident ryots entirely indeterminate because to do so would provoke litigation in a specially misty region where the grounds of decision would be ill-defined. But the occupancy right carried with it the claim to favourable rates. Its wide acknowledgment involved injustice to the zamindars, because they had been granted, at the Permanent Settlement, the equivalent of the State share of the produce and were thus practically empowered to obtain the full market-rent of the land. It was the intention of the framers of Act X of 1859 to give them the market rate[8] of the day. If the zamindars had been entitled only to the money rental paid at the time of the Permanent Settlement, then the proposals made to the Commission touching the occupancy right were justifiable. But if, as Mr. Harrison thought, the zamindars were entitled to the same share of the produce *now* as yielded that rent, which was a rack-rent or at least a full rent, in 1793, then the most that ought to be done, in view of public policy, was to give as much security to the actual cultivator, without rights of occupancy, as should be no serious hindrance to a landlord getting into his own possession any land

[1] Rent Papers II, page 363. [2] Rent Papers II, page 384. [3] Rent Papers II, pages 393, 455. [4] Rent Papers II, page 392. [5] Rent Papers II, page 392. [6] Rent Papers II, page 393. [7] Rent Papers II, page 398—418. [8] Rent Papers II, page 412.

which he might specially need, or ridding himself of any particular tenant. Guided by these considerations, some of which, however, he did not fully elaborate till a later date, Mr. Harrison put forward on the 23rd January 1880 the scheme for three-year tenants, protected by compensation for disturbance, which has since been altogether abandoned. This scheme was adopted by the Commission on the 27th of the same month,[1] and on the 6th of the next month the question of sub-letting arose.

Sub-letting.

10. The connection of that question with the limitations on rental, so strongly deprecated by Mr. Harrison, will appear in a few moments. It should first be noticed that the Commission originally proposed to put down sub-letting with a strong hand in a very direct fashion, recalling the proposals of the Famine Commission and the provisions of the recent Land Law Act for Ireland. It was determined, on the 6th February 1880,[2] "that if an occupancy ryot does sub-let, he shall be held to have transferred to his lessee his right of occupancy in the lands sub-let; if these lands do not amount to the whole of the ryot's holding, the persons to whom he sub-lets shall be jointly and severally liable with him to the zamindar for the rent."

Provisions of the Irish Act.

Under the Land Law (Ireland) Act 1881, sections 5 and 13, sub-letting, without the consent of the landlord in writing, is a breach of the statutory conditions (except in certain specified cases, of which temporary depasturage is one), and can be visited by ejectment founded on notice to quit, but subject to the right of the tenant to apply to the Land Commission before the ejectment is actually brought, which Commission may then restrain the proceedings if it thinks that adequate satisfaction for the breach can be made by payment of damages. The Famine Commission[3] recommended "that concurrently with the extension of the right of transfer, the practice of sub-letting by an occupancy tenant should be discouraged, or even, if possible, forbidden. Care must no doubt, be taken, lest such a measure should work harshly. But if a tenant, for a long period, fails to keep up the stock required for cultivating his land, or otherwise ceases to be, by occupation and habit, a *bonâ-fide* cultivator, the rights he or his ancestors acquired by cultivating the soil might reasonably pass from him to the person who, having become the actual cultivator, occupies his place." The notion is that the Rent Courts would investigate such cases, and where the question was decided against the occupancy tenant, bestow his right upon his sub-lessee.

Proposals of the Famine Commission.

11. I mention these actual or proposed measures in restraint of sub-letting for comparison with what I am about to say. In a fortnight the Commission struck out a fresh line, and the proceedings of the meeting of the 20th February 1880 should be read at length.[4] There is nothing new in declaring that the rents of occupancy tenants may only be enhanced on certain specified grounds; that is the law in many parts of India. The novelty in the sections of the Bill relating to enhancement consists in the imposition of a legal maximum limit on rents. This is done with the object of "stopping sub-infeudation, of discouraging sub-letting, and of encouraging and strengthening the position of the actual cultivator." Here it is that we trace the origin of many rules afterwards supported on these and other grounds, of the rules, for example, that the enhanced rent of an occupancy ryot shall not be more than doubled at a rise, nor exceed one-fourth of the average annual value of the gross produce; and that the rent of an under-ryot not having a right of occupancy shall not exceed some percentage of the same amount. The rules for the enhancement of the rent of tenures were introduced into the Bill partly for different reasons. But the general conception seems to be that of a hierarchy of persons with interests in the soil,—zamindar, talaqdar, ryot, korfa,—each with a definite legal share of the produce, or its cash equivalent, made over to him by express enactment and so limited that the lowest rank shall obtain a competence, and that the lowest rank but one shall have little inducement to separate itself from the actual cultivation of the soil. As a further check on sub-letting, it is declared in section 71 that no occupancy ryot shall sub-let his holding, or any part thereof, without the written permission of his landlord. If, however, he does sub-let, the demise is valid, but the landlord retains his right to distrain.

The discouragement of sub-letting is one of the objects of the proposed legal maximum for rents.

Defects of the proposal if worked only through the Courts.

12. Now, if this scheme were no more than a plan for discouraging sub-infeudation and if it were meant to be worked exclusively through the agency of

[1] Rent Papers II, page 228. [2] Rent Papers II, page 231. [3] Vol. II, page 120, paragraph 21. [4] Rent Papers II, pages 232-6.

the ordinary Courts, many would doubtless be of the opinion of Mr. Harrison,[1] with respect to the final and most important link in the chain, of Mr. [illegible][2] that there is no hope of its success. Thus regarded, it is without [illegible] in the custom of the country, because it is simply a new invention [illegible] for the purposes of this Bill. The parties could evade every part of [illegible] their common interest or preference lead them to do so. To borrow [illegible]ment from the supplementary report of the O'Conor Don[3] on the Irish [illegible], if the landlord is empowered to prohibit the sub-lease, he may grant [illegible]ission for a money payment and thus be interested to promote the [illegible]ctice which it is intended to discourage. With the penalty of eject- [illegible] the back ground, the occupancy tenant might fear to run the risk of [illegible] to a bargain with the landlord which would not be recognised by [illegible]t here there is practically no penalty at all. If the landlord retains [illegible] of distraint, he and the occupancy tenant might, in combination, use [illegible]ir joint advantage. There are frequent allusions in these papers to [illegible]eticability of working the well-known rule of proportion through the [illegible]. But here, not only is a rule very closely resembling it inserted in the [illegible] a number of new positive checks are introduced, of which several [illegible]y be applied with much labour. If in an enhancement suit a munsif [illegible]end to all the restrictions prescribed by section 24, it may be thought [illegible]tion would be interminable, and that the munsif had much better, [illegible], save time, be transformed into a settlement officer to assess rates for [illegible] country.

[illegible]t is improbable that any of these objections escaped the notice of the [illegible]on and the Local Government; for I understand it to be the intention [illegible]ystem of regulating rents shall be worked through the Collector's assess- [illegible]he old law was that the landlord might take no more than the customary [illegible]e locality from the village ryot. But these old customary rates have became uncertain, and even if they could now be ascertained, they would not secure to the zamindar the share which (whether rightly or wrongly, we need not, for present purposes, inquire) he has in course of years managed to obtain. The *pergunnah* cash rates of 1793 would not effectuate the zamindar's right of enhancement, recognised at all events since 1859, if not by earlier legislation. It is an immediate and logical consequence of such reasoning that if a *pergunnah* rate is wanted and cannot be found, the best thing to do is to manufacture one by Government authority. As Mr. Mackenzie[4] puts it: "if no general *wirikh* exists in a village, the only way of securing satisfactory arrangements for the future is to establish one as soon as may be." Under the procedure of Chapter XV, the Collector will make and declare the *pergunnah* rates to be paid by occupancy ryots, who will now be all the resident ryots in the country. I do not think that the Government need hesitate to sanction this part of the Lieutenant-Governor's plan. I look upon the theory, that what is now called rent in Bengal was originally a land-tax, as established in these papers beyond doubt. In the conflict of classes in such a dependency as India, the Government must interpose; and if interposition is inevitable, it had better take the most effective method and the directest course. To abandon the contending parties to their strife, is not merely to multiply difficulties in almost every branch of the administration; it is also to condemn the weaker side to oppression or unjust loss and, in the present instance, in either case, to impede agricultural prosperity. Bearing in mind what little I have learnt of the traditions, feelings and history of this country, both from these papers and in the course of my service, I believe that the idea of an authoritative determination of rent rates by the Revenue officers of Government is likely to commend itself at once to popular sentiment as a reasonable and proper operation. Without multiplying analogies, I would point out that there is evidence in these papers that the *pergunnah* rates were so fixed many years ago in the 24-Pergunnahs and Dinajpur. In the 24-Pergunnahs, indeed, it so happened that the old zamindars were at one time excluded[5] the revenue was "managed by an officer of the company in the capacity of zamindar, a detailed measurement of the district was made, and a record prepared, specifying the rates at which the rents of the ryots were to be adjusted, with a detail of their holdings, the settle-

It is, however, meant to be worked through the Collector's assessment.

[1] Rent Papers II, page 402. [2] Rent Papers III, page 666. [3] Bendemagh Report, page 49. [4] Rent Papers II, page 384. [5] Mr. Holt-Mackenzie's evidence of 1832, Rent Papers II, pages 397-98.

ment in fact being *ryotwar*." But the essential rights of the tenantry were maintained after the restoration of the zamindars. In Dinájpur the precedent is even more to the point. Mr. Westmacott, I have heard, knows Dinájpur particularly well. He finds in that district, "where the relations of landlord and tenant appear to have been less subject to modification than elsewhere, a universal respect paid to the *pergunnah siristá*, or rate, as laid down by the great Collector, Mr. Hatch, in 1790." "We made", he continues "one of our legislative blunders in our settlement of 1790; we were assessing the Government revenue, and we stated clearly enough what the Government was to receive; but the country is suffering now from an omission to perform the other half of the work and declare what the ryot was to have paid. Hatch did it in Dinájpur, and probably some Collectors did it elsewhere; but it was not done generally. The consequence is, that in Dinájpur the relation of landlord and tenant is more satisfactory than elsewhere. What had to be done was, first, to declare what share of the gross produce was the property of Government; secondly, to assess on that share a money value; and, thirdly, to declare how much of its share Government would forego for the costs of collection. Instead of this, in many districts, I believe no notice was taken of what the ryot paid as the Government share of the produce, but only the net revenue paid by the zamindar was considered. The most essential point was neglected. Having imperfectly done the work of assessment, we next bound ourselves to forego all right of revision for the future. We protected the zamindar against ourselves, but not the ryot against the zamindar. Mr. Hatch, and such of the Collectors as did their work equally thoroughly, did protect the ryot by authoritative tables of rates, and consequently the ryots are a thriving and substantial body to this day."[1]

The revised law of enhancement and the tables of rates should be brought into operation simultaneously.

14. Now, when the positive checks on enhancement are viewed in relation to the Collector's table of rates, the scheme assumes an entirely different complexion. It is one thing to lay down complicated rules in an expectation that the public will spontaneously follow them, or that they will be enforced only by the somewhat dilatory and uncertain action of the law courts. It is another thing to prescribe rules for the guidance of officers in assessing a particular form of demand, when the result of the assessment will be a public declaration likely, from consistency with the old custom of the country, to reach the general understanding, and, if the assessment has been well and fairly made, to command very general assent. But the suggestion, which is the outcome of these considerations, is that it might be an improvement, *first*, to make it more plain than section 154 of the Bill at present does, that the Collector in framing his table of rates must be guided by the principles of section 24, with any modification that may be thought necessary, and, *secondly*, to ensure that the whole plan shall be brought into operation simultaneously by retaining the existing law of enhancement until, in any district, the table of rates comes to be prepared. Where the ryots are strong, it would certainly be no advantage to the zamindars to find the right of enhancement restricted by additional checks; and if the latter are unable to succeed in enhancement suits under the present law, it seems reasonable to say that they must bide their time till rates can be ascertained by a fair and comprehensive procedure. In Behar, on the other hand, there is evidence to show that checks on enhancement must assume a more drastic character than in other parts of Bengal. Mr. Reynolds[2] tells us that it is not the object or desire of the local officers to facilitate the proof of the prevailing rate as is done by the alteration of the first ground of enhancement in section 23; and the Bill (section 84) prohibits enhancement by the Behar *thikadárs*. The opinion which I venture, with extreme diffidence, to submit is that, except in Behar, the checks on enhancement should be brought into play *only* by the agency of the Collector's table of rates, and that the period of framing that table should be the period for extending the new law of enhancement to the particular district selected for the operations. This would be a gradual process, those districts being first taken up in which intervention was most requisite; and if this idea, which is of course an adaptation of ordinary settlement experience, is at all favoured, its acceptance would constitute another reason for dealing separately with Behar. If the description in the papers of the condition of things in Behar is to be believed, some earlier remedy should

[1] Rent Papers III, p. 911. [2] Rent Papers IV, page 378.

be there applied than the preparation of tables of rates for the several districts. Moreover, one object of the tables is to settle fairly the claims of the zamindars to enhanced rentals. In Behar enhancement has been excessive hitherto.

Positive checks on enhancement considered as principles of assessment.

15. If the proposed positive checks on enhancement be regarded, not as rules of positive law, but as principles for the guidance of assessing officers, it is much easier to compare them with the practice obtaining or the suggestions afoot in other parts of India. It will be convenient to notice each briefly in the order in which they occur in section 24.

(*a*) Where the productive powers of the land or the prices of produce have been increased by the agency or at the expense of the ryot, no enhancement on that account is allowed. In the converse case, where the improvement is exclusively the landlord's, he has the whole benefit, except that he is restricted by the limit of double the rent in clause (b). The case where the improvement is at the joint expense of both landlord and tenant is not provided for. Where the improvement is due neither to the landlord nor to the tenant, the present law "gives the whole of the increase to the landlord, except in cases of customary rents, in which the rule is limited by the principle of proportion enunciated in the great rent case."[1] It is proposed to make a change in the law, and to divide the increment equally between the parties, on the ground that if it be admitted that the ryot has certain rights, has a certain interest in the land as well as the zamindar, both should participate in the benefit which accrues to the common property from external sources over which neither has any influence or control. I have not found the argument in the papers, but to my mind the strongest justification for this rule is that we are really dealing with a land-tax, and that the half-assets rule of assessment common in Upper India would practically bring about the like result, unless there were exceptional cases where the cost of production had increased together with the productive powers of the land or the price of produce.

(*b*) The restriction that the enhanced rent shall not be more than double the rent previously paid, has recently been discussed by the Government of India in connection with the settlement of the Jaintia pergunnahs in the Sylhet district of Assam.[2] It was concluded upon evidence taken from other Assam settlements that a rule against doubling the assessment ought not to be applied universally; and it will probably be accepted that this conclusion is sound in respect to parts of the country where means of communication are incomplete, and the general resources as yet imperfectly developed. I have summarised some of the objections taken to this rule, as proposed for tenures, at pages 41-2 of my notes. The rule may be thought likely to work hardship to landlords in some cases, either when a man might suffer for the indulgence of his predecessor, or when the increase in productive powers, (as by the change in the character of alluvial soil already paying rent), or of prices, (as by the advent of a railway), might be very sudden and very great. It will have been noted that if the "unearned increment" is to be divided between landlord and tenant, the rule now under consideration may sometimes give the former less than his share.

Perhaps, if the proposal in the Bill that the enhanced rent shall not bear a higher proportion to the rent previously paid than the increased productive powers or increased prices bear respectively to the former productive powers or former prices, be regarded as a rule of assessment, not as a rule of judicial decision, no objection will be raised to it. It seems fair, and would find a parallel in many settlement calculations. It is the business of settlement officers to work out such estimates and sums, which, after due inquiry, will probably suggest useful conclusions as to tracts of considerable extent. But to instruct a judicial officer to ascertain the past and present productive powers of a given field, and to compare those arithmetically with the rent paid and that demanded before he can pass a decree for an enhanced rent, seems to my humble judgment a direction calculated to delay or deny justice to the zamindar.

(*c*) A similar objection may be urged against the limitation of the rent to one-fourth of the gross produce which is the point of the next clause. Courts of justice are not a convenient machinery for estimating the value of the gross produce of land. A gross produce standard is, of course, open to a

[1] Report, paragraph 55. [2] H. R. A. Proceedings, June 1891, Nos. 74-5.

great deal of discussion on other grounds. As a mode of determining a State share, it has the recommendations of simplicity, history, and tradition. It is not a scientific rule, because it ignores differences in the cost of production and in the varying capacity to pay the rent which depends on the size of the holding. It has been superseded in the North-Western Provinces by the half-assets rule, which is, economically, far more correct. It still has some, though a very partial, operation in the Punjab. It was very vigorously condemned as a barbarous expedient by Sir Charles Aitchison when discussing the Burma Directions to Settlement Officers last summer. Mr. Harrison[1] propounds the dilemma that "if any gross produce standard is adopted, either it must be a most unfair and inadequate rent for the superior lands, or it will, if claimed, throw a quantity of inferior land out of cultivation." Mr. Field after an exceedingly valuable and comprehensive review of the question, which should be read,[2] concludes that it would not be safe to fix by law any particular share of the gross produce as *the measure of rent*, either for all districts or for each district. The proposal of the Bill is not for a *measure* of rent, but for a legal maximum. Nevertheless Mr. Field's remarks upon the numerous circumstances determining rent and the great variety of rent-rates actually existing in Bengal are material to the decision as to what a legal maximum, based on a gross produce standard, should be accepted. As a mere personal view, I think some such guide would be useful in the preparation of a table of rates; though, even in the executive process of assessment, I would not follow it as an invariable rule. I would entirely exclude it from the Civil Courts, for the reasons already mentioned.

(*d*) The Bill of the Commission allowed the Court, at its discretion, to direct that enhancements should be progressive; the Lieutenant-Governor adds that this may be done if it be shown that the payment of the enhanced rent would be attended with hardship. Such a provision appears wholly unobjectionable, whether it be enforced through the medium of a table of rates or through the Courts. The Government of India has lately been in correspondence on this point with the Government of the North-Western Provinces and Oudh.[3] As regards the former, the Lieutenant-Governor advocated, in view of future revision of assessments, the enactment of a general provision empowering Settlement Officers, when fixing progressive assessments of land revenue, at the same time to fix progressive rents. As regards Oudh, whilst he did not desire to resort to legislation, he proposed to effect the same object by taking agreements from the landholders when re-settlements are instituted fifteen or twenty years hence. No immediate decision was pronounced, but the papers were published for information.

The positive checks on enhancement should be converted into executive rules for assessing rent-rates.

16. It is a general rule in the Punjab, the North-Western Provinces, Oudh, the Central Provinces, and Bombay[4] that the executive Government shall lay down the principle upon which the land revenue shall be assessed; and this procedure has much obvious convenience because local diversities can be separately considered, and local specialities fully met without the delay of application to the Legislature. Following the analogy thus supplied, it might be suggested that the positive checks on enhancement should be struck out of the Bill, and the Lieutenant-Governor simply empowered to instruct the District Commissions charged with framing rates as to the principles and method which they should follow in their duty.

Difficulties of assessment without measuring lands.

17. The method, indeed, upon which the tables are to be prepared is not very clearly stated in the papers. The Lieutenant-Governor gives us some information on the point in para. 20 of Mr. Mackenzie's letter of 27th February last;[5] but he does not say whether the necessary classification of soils,—necessary, because the table of rates will declare the rates payable for each *class of lands* specified therein,—will be effected with or without measurements. It is the inference from Mr. Reynolds' examination of Babu Parbati Charn Roy's proposals[6] that measurements are not to be made; that even the classes of soils are not to be demarcated on the existing Revenue Survey maps. This is a detail, no doubt, but it is a detail of much consequence. I do not think

[1] Rent Papers II, 417. [2] Rent Papers II, pages 464-467. [3] Home, Revenue, and Agriculture Proceedings, May 1881, Nos. 83-84. [4] Land Revenue Acts: Punjab, Act XXXIII of 1871, Sec. 9; N.-W. P., Act XIX of 1873, Sec. 39; Oudh, Act XVII of 1876, Sec. 15; Central Provinces, Act XVIII of 1881, Sec. 47; Bombay, Act V of 1879, Sec. 214 (*d*). [5] Rent Papers IV, pages 14-15. [6] Rent Papers IV, pages 276-277.

many Settlement Officers would volunteer to find rates for a country not yet regularly assessed, field by field, without the help of measurements. In fact, I cannot definitely conceive in my own mind how such a task would be performed. Where soils have once been classified, and rates and holdings are on record, it may be a reasonable proposal that you should revise an assessment without measuring the country over again. But if the settling officer at the end of his work did not know what area there was of each class of soil, he would not know what was his total assessment; and this applies to any tract operated upon, of any size, from a village to a section of an empire. His work would be deprived of the efficient check of the comparison of the former with the intended total ... He could not compare the assessment of one village or estate with that ...her. He could not compile a produce estimate. It may be said that it is ...ssary to discover totals, as the rents would be realised in detail by indi... landlords, and that the object is merely to arrive at "roughly equitable ... Some might suppose that rates framed without any measurements would ...ough as to be nearly useless; but this may be my ignorance. I am accus... to a different set of ideas. The notion of an assessment with which I am ... starts from the measurement of lands as the only permissible point of ...e. Take an ordinary Punjab assessment. The most essential point is ...y the produce estimate. What is the total value of the produce of an ...ent circle? Deduct the tenant's (in Bengal, this would be the *kasht's*) ...llow for village servants, weighman's dues, and so forth; find the net profit ...pesant proprietor (the ryot of Bengal); fix half of that as the demand. ...istribute your total over the villages with corrections for local peculi...

You must know the amount of the produce before you can commute ...t you must, for that purpose, have ascertained the average yield per acre ... class of crop, and the total acreage cropped with the particular staples. ...is knowledge, measurements are indispensable. Take a North-Western ...oes assessment. You find the existing rent-roll from the village papers, ...u correct it by additions for *sir* land and by revised soil rates distributed ...e classes of soil existing in the village. If you do not know how much ...d there is, or what quantities there are of each class of soil in the village, ...ve no means of correcting the rent-roll. If measurements are under... on separate grounds, there is no reason to press these considerations. ...not, it may be thought right to ask the Bengal Government whether it intends that measurement shall be dispensed with in the preparation of the tables of rates; and, if so, how the District Commissions will assure themselves of the fairness of their assessments. Measurements have hitherto been considered necessary in analogous proceedings elsewhere. Further, it will be observed that when the rates for classes of soils have been determined, in the absence of measurements two questions are still left open,—*viz.*, what is the area, and what is the soil classification of the particular holding of which the rent may be in dispute? A field survey would decide both of these issues.

18. The weight which should be attached to the tables of rates when they have been prepared is a question of much difficulty. Whether there be a field survey or no, I fully agree in the view that it is inexpedient authoritatively to fix the rent of each field. There would be great danger in such a process. In my part of India, we avoid the risk of excessive detail by imposing a lump sum on a village, and then leaving the villagers to distribute the demand over their plots very much as they choose, without interference except in case of dispute. Very nearly the same result would be attained by the Bengal proposal to enforce the rates authoritatively only if they are claimed in Court. When a dispute arose, it would be a great advantage if both the area and classification of the holding were known. Nothing would remain for investigation but special circumstances which should exempt either party from the general rates. But it is an ordinary settlement experience that such special circumstances are common; and I think few Settlement Officers would agree to rates that could never be relaxed. At the same time, it is plainly desirable that the Courts should not have power to re-open all the general questions which the District Commissions would have been employed to determine. The Bill (section 142) allows the ryot to plead that he is entitled by custom or contract, or special equitable considerations, to hold at lower or more favourable rates. Why should equity look only to one side of the Court? Why is there no corresponding

The weight to be attached to the tables of rates.

permission to the zamindar? This point will probably be further discussed hereafter. It might not be impossible, when the work had been completed in a given district, and all the agricultural conditions of the settled tract were fully known, for the Local Government to declare that the rates should be unalterable on certain grounds, (as, for instance, on the ground of a general rise in price affecting the whole area), but subject to modification on certain other grounds, if successfully pleaded, (such as a purely local rise in price caused by the establishment of a new market).

Term during which the rates are to be maintained.

19. The table of rates is to have effect (section 143) for 10 years, and thereafter until a fresh table shall be published. The Lieutenant-Governor suggests the consideration of the term when the Bill is before Council. Mr. Mackenzie's letter[1] says: "The provision that a zamindar may go into Court in ten years' time to enhance an individual ryots' rent, is opposed to the whole principle of the table, which aims at a revival of a general *pergunnah*, or local, rate. If it were found possible to give landlords power of applying for a revised table—and the Lieutenant-Governor sees no good reason why this should not be allowed—it would be well to maintain the rates of the table in every case until formally revised." It may perhaps be thought that 10 years is much too short a term for a long-inhabited and well-developed district. The Famine Commission, as I have said before, recommend re-adjustments of rent every thirty years in Bengal. Under the Irish Land Law Act of this year (sections 5 and 8) when a fair rent has once been fixed by the Court, a statutory term of fifteen years begins to run from the next rent day during which the rent, so fixed and known as the 'judicial rent,' cannot be altered except in accordance with the agreement of landlord and tenant, if the former has laid out capital upon the land.

Term proposed by the Famine Commission. Term enacted in the Irish Land Law.

Other proposals for the enhancement of rents.

20. Whatever may be thought of the expedients for enhancing rents above described, it will probably be allowed that, on the whole, though susceptible of improvement, they constitute much the best plan which has yet been elaborated for the purpose by any of the authorities who have offered suggestions or conclusions on the subject in Bengal. Some of these suggestions have been reviewed in the Note at the end of Mr. Field's Digest; others have been discussed in the Rent Papers, more particularly by the British Indian Association and Mr. Reynolds, and in earlier correspondence with the Government of India. Distinguishing between the agency by which enhancement might be effected and the principle on which it should proceed, the two ideas mentioned by Mr. Field under the first of these heads, are that Settlement Officers should find the fair rates or that disputes should be referred to arbitrators. Although it might be held that greater use could be made of arbitration than is now proposed in the Bill, the Lieutenant-Governor's scheme for tables of rates combines many of the advantages which belong to a regular settlement with some of those arising from the association of assessors with public functionaries in the decision of contested cases. It may be doubted whether some broader measures will not have to be taken for organising a competent staff than merely setting apart carefully chosen Deputy Collectors[2] for the business; but this point may be left for future consideration. To turn to proposed principles of enhancement, the Chief Justice in the case of *Hills* v. *Ishur Ghose* uncompromisingly applied the deductions of theoretical economics to the peculiar rental system of Bengal, declaring that the zamindar was entitled to the surplus over and above the wages of the ryots' labour, and the ordinary profits of stock. The Bengal Revenue Officers were astonished and dismayed,[3] and a general feeling seems to have arisen that this rule, at all events, was inappropriate. Another idea, entertained a good many years later, was that of Mr. Cockerell, who proposed that the landlord's share might be regulated according to the proportion which the land revenue bears to the rental. Such proportion, however, was shown to be subject to extensive and capricious variety. "I have known," said Mr. Reynolds,[4] "some cases in which the revenue has been to the rent as 1 to 500, and in such instances are we to say that the landlord shall only be entitled to $\frac{1}{500}$th share of the increase?" Three plans, all mooted in the earlier correspondence, are compared on the present occasion by the British Indian Association[5]. *First*, the com-

[1] Rent Papers IV, page 37. [2] Rent Papers IV, page 25. [3] Rent Papers IV, page 122. [4] Revenue, Agriculture and Commerce Proceedings, February 1879, page 132. [5] Rent Papers III, pages 907-04.

petitive value of the land might be assumed from the rents of unprivileged tenants, and a deduction made in the occupancy ryots' favour. This is the principle of the Oudh[1] and Punjab[2] Acts, and of section 14 of the North-Western Provinces Act.[3] The Association does not now desire its adoption. It is said that the village rent-rates for ordinary occupancy and non-occupancy ryots[4] are the same in most districts;[5] but the *korfa* or *burga* system under which the under-ryot pays half the crop prevails very extensively. The resuscitation of the *pergunnah* rates by executive agency has a root in the traditions of the country, of which a system of basing occupancy rents upon *metayer* payments would be destitute. *Secondly*, the Association admits the reasonableness and equity of the rule of proportion laid down by a majority of the Judges of the High Court in *Thakurani Dasi* v. *Bisheshur Mukerji*, the great rent case of 1864, but pleads that it is unworkable. The rule applies only where the value of the produce has been increased otherwise than by the agency, or at the expense, of the ryot, and where the previous rent was a customary one. It is that the enhanced rent should be calculated so as to bear to the previous rent the same proportion that the increased gross value of the produce bears to the previous gross value. The first term in the proportion is difficult to prove by evidence in a Court of Justice. "One proprietor," according to Mr. Field,[6] "is said to have spent a lakh of rupees in enhancement litigation without much practical result, before the inutility of the present law had been demonstrated." *Thirdly*, what the Association desires is that the ryots' rent should be fixed at $\frac{1}{4}$ths of the money value of the gross produce. There are economic objections which have a more direct application when the rent is varied with the produce than when it is merely laid down that the rent shall not exceed a certain maximum estimated in terms of produce; and to any proposal for a general adjustment of rents to produce there is the conclusive reply that existing rents differ enormously.[7] By Babu Kishari Lall Sirkar,[8] a pleader of the High Court, it has been urged that the maximum rate of enhancement should be fixed at a stated share of the net produce. Mr. Reynolds replies that "to determine the net produce would involve a number of intricate calculations, varying with the different circumstances of almost every particular holding. It must be perfectly clear that the duty could not be undertaken by the executive, and that it would have to be left to the Courts." If the Courts could not work the rule of proportion, *a fortiori* they could not work a declaration of law that rent shall be a share of the net produce. But it has not been found impracticable to prepare estimates of the net produce for tracts of country in the Punjab and Madras, and there might be no insuperable difficulty in incorporating this principle with the Lieutenant-Governor's scheme if the Government considers that the gross produce is a wrong standard, even for a legal maximum. The suggestion[9] to take the present ratio of rents to the value of produce and then to adopt by law a standard rate or standard rates varied for territorial divisions does not appear to differ in result from the proposal in the Bill. It will probably be thought that the principle of the Tithe Commutation Acts[10] could not be applied in India without local inquiries, and that if local inquiries are made they had better aim directly at the object of fixing fair rates for terms of years. Babu Parbati Churn Roy[11] has had experience as a Settlement Officer in Dacca, Faridpur, Backergunge, Tipperah and Mymensingh. He would demarcate on the ground descriptions of lands in blocks without detailed *ryoteari* measurements. I do not know whether Mr. Reynolds[12] regards this system as incompatible with idea of the Bill, but I imagine that many other Settlement Officers besides the Babu would consider it a very necessary adjunct to the undertaking. The recommendation of Raja Promothonath Roy[13] that the rents for particular and defined tracts of country should be fixed at particular shares of the gross produce, not exceeding one-fourth, determined from time to time, or definitely, by the Lieutenant-Governor on the recommendation of the Board of Revenue, appears to differ from the method of the Bill, not in principle, but in the latitude it would leave to local variety in the rates. On the other hand, Babu Joykissen Mookerjee[14]

[1] Act XIX of 1868, Section 22. [2] Act XXVIII of 1868, Section 11. [3] Act XII of 1881. [4] Rent Papers I, page 2. [5] See also Mr. Nolan, Revenue Agriculture and Commerce Proceedings, February 1879, pages 39 4; and Digest, page 240. [6] Digest, page 242. [7] Mr. Reynolds, III, 1006; Digest, pages 246-47. [8] Rent Papers III, pages 884-85. [9] Digest, page 249. [10] Digest, pages 250-52; Rent Papers II, page 264. [11] Rent Papers III, pages 621-25. [12] Rent Papers IV, pages 276—77. [13] Rent Papers III, page 490. [14] Rent Papers III, page 552.

would restrict the table to a declaration of the proportion which the rent now bears to gross produce, and he would make this proportion, as I understand, the measure of rents, the Court performing the process of commutation at current prices. This would perpetuate the present extreme inequalities and would prejudice the zamindars whose existing share is too low.' Lastly, Mr. Boxwell[18] of Darbhanga favours Judge Longfield's proposal to give the tenant the option of accepting an enhanced rent or compensation calculated on a fixed number of years' purchase at the enhanced rental. Not to mention that a modification of this principle was adopted in section 28 of the condemned chapter of the Bill of the Commission, it may be replied that to perpetuate by law the alternative of eviction or enhancement would not tend to compose strife, that if the scale of compensation were not prohibitory it would conflict with the main principle of the Bill, security of tenure, and that if it were prohibitory, it would conflict with the second main principle, that the landlord shall have a fair rent.[1]

Limit of produce-rents.

21. The only further point which it seems necessary to notice in connection with enhancement is the provision of section 22 that produce-rents or appraised rents shall not exceed fifty per cent. of the gross produce for staple crops, where the occupancy ryot does not receive seed or labour or other assistance from his landlord. Mr. Reynolds added to the section as drafted by the Commission words intended to save the operation of contracts, but these have been struck out by the Lieutenant-Governor, who states that half the crop is the very maximum rent allowed by the custom of the country. If so, perhaps it might be thought that custom should, in this instance, be left to its operation. The Chittagong landholders[2] mention such shares as $\frac{3}{8}$ths and $\frac{4}{8}$ths; Mr. Pratt[3] of Purneah states that the custom in many parts is for the landlords to receive $\frac{5}{8}$ of the produce; and Mr. Stevens[4] of Burdwan holds it to be certain that rents exceeding the limit of 50 per cent. are not unfrequently paid. The remarks of Mr. Reynolds[5] on the first set of opinions may be read. In the subsequent opinions Mr. Larminie[6] thinks it anomalous that the cash rent should never exceed a fourth of the gross produce, while the produce rent might be one-half. He would prescribe a quarter of the produce in either instance, but he has overlooked the fact that where money rents are fixed the ryot takes the risk. It is possible, though it does not clearly appear, that in the instances I have cited of higher rents than half produce, some assistance may be given by the landlord. But I venture to concur in Mr. Dampier's[7] remark that the section, if retained, should set at rest the question whether the maintenance of small *bunds* or village irrigation works, common under the name of *gîlandâzi* and *kheri-bandi* in parts of South Behar and in the Midnapur District, is assistance within the meaning of the Bill.

Further considerations on sub-letting.

22. I have now to return to the question which is perhaps the hardest of all the knotty points in the Bill. The plan of a legal maximum for rents may be useful for assessment purposes, but I do not think it will have the effect of stopping sub-letting, if for no other reason, because it fails exactly where it is most needed, that is in connection with the rents of under-ryots. It may be argued that the tables of rates will gain a wide acceptance when the Courts begin to act upon them. They will be the substitute for customary rates and acquire force from association and tradition. But the machinery applies only to the rents of occupancy ryots; it will not touch the rents of under-ryots which will be governed by section 30. Taking the view of the Lieutenant-Governor[8] that sub-letting is already a well-established practice, it may be that a direct prohibition is out of the question. But looking to section 30 as a whole,[9] it is respectfully submitted that it will be either inoperative or injurious in an economic sense. I have given some reasons for supposing that it will be inoperative at pages 46-47 of these notes. If, on the other hand, it proves effective, then having regard to the rest of the fourth chapter, it seems to me that the margin of property will not be suffered to work its full effect on any single holding in Bengal. Neither landlord nor occupancy ryot will have a complete interest in his land, nor will either have entire freedom to deal with any part of it at pleasure. Sir Charles Aitchison, in August 1880, was disposed to take exception to "the

[1] Mr. Reynolds, Rent Papers IV, pages 277-79. [2] See Hunterganj Report, page 18. [3] Rent Papers III, page 486. [4] Rent Papers III, page 523. [5] Rent Papers III, page 645. [6] Rent Papers IV, pages 256-257. [7] Rent Papers III, page 946. [8] Rent Papers III, page 966. [9] Rent Papers IV, page 21. [10] Rent Papers III, page 886. [11] It limits the rents of ryots as well as of under-ryots and thus applies to proprietors no less than to occupancy ryots who sub-let.

ficial and complicated arrangements" in the Bill of the Commission, which seemed to him to reduce "almost all possible relations between landlord and tenant to be questions to be settled by the Court." If, in the case of the present measure, any such exception be admitted to apply, the provisions of the fourth chapter might, very possibly, be adduced in support of it. Assuming that history, policy and economic advantage demand the recognition and maintenance of a substantial occupancy right, and that any such right would be illusory unless it were fenced about by the only sort of protection which can render it valuable, namely, limitation of rent, is there to be no square inch of Bengal outside Orissa and the Scheduled Districts where free contract is to have fair play both as to cash rents and sharing the produce? It is so plain that commercial principles do not apply to the Bengal rent question that I have thought it worth while to give any reasons for such a view, though I have found some remarks of Professor Bonamy Price and the Duke of Argyll which comprise forcible statements of that side of the land controversy. Contracts are only free where the parties are equal; and the quasi-fiscal demands which take the place of rents in Bengal do not in the least resemble the annual payments which men of adequate skill and capital would offer for a farm when it is really open to competition. But are the landlords in respect to all classes of land, whether *ryoti* or *khámár*, and the occupancy ryots in respect to their own holdings, to be universally refused the advantage of perfect liberty of contract with their lessees? Is the economic benefit of unfettered discretion in dealing with the soil to be banished, so far as the law can expel it, from the whole valley of the Ganges from Sirsa to Backergunge? If so, how long is this state of tutelage to last? Has the educational value which belongs to the free exercise of authority within a limited field been overlooked? Let the necessities of the time be met by interposition to deliver the cultivators from injustice and to compel them to render to their superiors their proper dues. But do not eviscerate the scheme of reform by extracting the principle of growth which might be retained as part of it. This portion of the Bill omits, it may be thought, the germ of social development. It may be said to assume that a state of society in which men are not to be wholly trusted to manage their own affairs lest they should come to blows or prey on one another will endure to perpetuity. I admit the necessity for intervention in the mass of cases, in behalf, that is, of all resident ryots; and I admit that the immediate intention here is not to part the combatants, but to prevent the misuse of the occupancy right. But what I have stated seems to me to be the practical consequence of limiting every agricultural rent in the country. Would it not, then, be well to mark off at least some regions where landlord and ryot, occupancy ryot and under-ryot, could meet as though they stood on equal terms? If the law seems practically to postulate that whole classes of an immense population have in no case the morality or personal independence and intelligence for fair dealing about land, and if the law is operative, the day when these qualities will be more generally diffused than at present will be long deferred.

23. There are other reasons which suggest the conclusion that sub-letting has not been satisfactorily dealt with in the Bill. Sub-letting is usually denounced as a crying evil, and no doubt it is so where holdings are small, and the result is an idle spendthrift at one end of the chain and a rack-rented starveling at the other. It would be easy to declaim against the intruding speculators who wring the last pice out of the peasantry, and there have been free denunciations of the malpractices of the Behar *thikadárs*. But at the same time it is hard to believe that a very generally adopted custom in all cases injures the society where it occurs. It is submitted that when the lessor is *not* divorced from the soil, and when the holding is large enough to feed many mouths, and that plentifully, sub-letting, even by an occupancy ryot, may not be an evil after all. Sub-letting, such as is described by Mr. Lowis,[1] such as is prevalent on the big alluvial lands of Noakhálí and Backergunge, seems scarcely a social misfortune; it is more like an advantageous method of managing the reclamation of waste lands. The *hawáladar* obtains a lease of a block of land at easy rates; he "proceeds to bring a certain portion under cultivation, and portions of the waste, the cultivation of which he cannot undertake, he leases out to *nim-hawáladárs* at rates higher than his own. The *nim-hawáladárs* again

Sub-letting has not been satisfactorily dealt with in the Bill.

[1] Rent Papers III, page 474. See also Mr. Westmacott, Rent Papers III, pages 976-8.

cultivate some land and lease out portions to *jotdárs*, or perhaps to subordinate *kendladdrs*, who again relet to *kurpa-grajeet*." Such cases have not been overlooked in the Bill. Sections 10, 19, Explanation III, clause (c), and 168, are intended to apply to them. But it may be doubted whether the proposals in these sections, taken with the rest of the Bill, really meet the true requirements in the matter. It might be urged that any occupancy ryot who cultivates, and has more land than he can cultivate himself, ought to be able to let the rest at any rental without any one's consent; and that if custom recognises a sub-occupancy right in under-ryots depending on the big *jotdárs*, there is no sufficient reason, in the accident that the holding of the *jotdár* may happen to be less than 100 bighás in area, for rescinding such a customary right. It may be said that none of the holdings are of less than that size. If the fact is so, the consequence would be the same if the limitation in the law were omitted; and it might be safer to strike it out, for we know that the holdings have not been measured. Messrs. Reynolds[1] and Dampier[2] came to the conclusion that any attempt to prohibit sub-letting would be futile. Mr. Reynolds thought it equally useless to limit the rent at which the ryot may sub-let. He expressed some doubt whether there was any serious evil to be corrected, and felt much force in Mr. Dampier's argument that we cannot stamp out the class of sub-lessees and have nothing better to offer them than their present position. In Behar, I observe that Mr. MacDonnell[3] would allow an occupancy ryot to sub-let for a term of years, and that Mr. Edgar's[4] proposal to confer the occupancy right on the *actual cultivator* of *ryoti* land would involve the forfeiture of the right on the occurrence of a sub-lease, except in certain special cases, such as minority, absence on pilgrimage, temporary emigration and the like. Mr. Reynolds', however, states that the question of sub-letting by ryots does not present any special difficulties in Behar, for the conditions of a secure status and a light rental, which promote the practice, are rare. Finally, the Bill allows private sale and mortgage. It has been said that rent is only a price paid by instalments, and it would be easy to adduce customary forms of mortgage which differ very little from a lease. It can hardly be disputed that if these forms of transfer are permitted, sub-letting could continue under the guise of a pretended mortgage or sale, and that the only effect of a restriction on rent would be to give the sum paid for the use of the land some other designation.

Transfer by Court Sale.

24. And this brings me to the question of the transferability of the occupancy right on which I have made some remarks at pages 21-22 of my Preliminary Note. The great advantage of a sale in execution for decrees of rent is that it is an excellent substitute for eviction. A tenant cannot be suffered to pay no rent; and if he is simply evicted and yet has an interest in the soil, the complicated problems of compensation for disturbance or for improvements arise immediately. If the holding is sold and the tenant (as is proposed in the Bill, section 233, clause 4) receives the surplus sale proceeds after discharging the rent, he obtains the full value of his interest, whatever it is, supposing the sale to be made in the open market. The landlord has no reason to complain. He gets a good security for his rent, and if he does not want to lose his tenant he need not sell him up. Moreover, it might be arranged (though the Bill does not adopt this principle) that the landlord should proceed first against the other property of his debtor. I have ventured to represent at some length that such an arrangement is the preferable one, and to contend that it is highly inexpedient under any circumstances for the occupancy right to be exposed to summary sale without decree. Court sales in execution of decrees, other than decrees for rent, may be common in Bengal; but I observe that the returns in the Rent-Papers do not distinguish sales for arrears of rent from others. Where the practice is well established, it would probably be thought inexpedient to interfere with it. If court sales of any kind are permitted, it may be argued that free transfer should be recognised at once, for the object could always be attained by a collusive suit or a wilful default in rent delivery. But it would be practicable, if necessary, to give the landlord the right of pre-emption at all court sales that did not follow his own suit; and refusal of rent for the purpose of illegitimate sale might be defeated by process against other property in the first instance, and by transferring rent decrees to

[1] Rent Papers IV, page 396. [2] Rent Papers II, pages 472-3. [3] Rent Papers III, page 744. [4] Rent Papers III, page 756. [4] Rent Papers IV, page 384. [5] Summary, pages 74-75, 125-128, 130-134. [6] Rent Papers II, pages 202-3, &c.

the revenue authorities for execution. If the holding could pay the arrears, the Collector could arrange that they should be paid out of produce. If it could not, they should be foregone like irrecoverable land revenue, and, if need were, the rent should be re-adjusted to the sum which the holding could properly be expected to pay.

Transfer by private sale. In Behar.

25. Out of the fourteen objections to free sale enumerated at pages 166-167 of the Digest, nine have no application where the landlord, by his own suit in court or otherwise, sanctions the sale, one is of a political character, three are advanced in the interest of the ryot, and one is peculiar to Behar. Taking the last first, it is said that in Behar the ryots are too poor to purchase holdings, which will therefore be put up to sale in vain, and it is replied that, if so, this is no reason for refusing free sale to the tenantry of Bengal Proper.[1] Premising that to permit sale and disallow mortgage is impracticable because covert agreements to reconvey the land could not possibly be prevented, I observe that, amongst the Behar officers, Mr. Worsley[2] of Muzaffarpur was in favour of this proposal of the Commission. Mr. Barrow[3] of Darbhanga, quoting experience in Shahabad, inclined to freedom both of mortgage and sale. Mr. MacDonnell[4] recommended that the assent of the landlord should be required to sale, but should not be unreasonably refused. Mr. Reynolds,[5] in reporting on his conference at Bankipur, proposed that in cases of sale, either under decree for arrears or by private contract, a right of pre-emption should be accorded to the zamindar or to the village community. Mr. Edgar[6] thought this would not perhaps be necessary, but still might be useful, if the right of occupancy were restricted to the actual cultivator. He had found such a rule to work well in Cachar. Mr. Metcalfe[7] of Patna was opposed to giving the ryot the power of sale. Mr. Nolan[8] fully approved the proposals of the Commission. Mr. Halliday,[9] Commissioner of Patna, agreed to transfer by sale, and apparently, though with some hesitation, to mortgage also. As I have noted,[10] the Behar planters wish the occupancy right to be freely transferable. The Behar landholders[11] proposed, as provisions less objectionable than those of the Commissions Bill, that ryots should only be allowed to sell to other ryots of the same estate, subject to the zamindar's pre-emption, and that the zamindar might bring the right to sale in execution of a decree for arrears of rent, but that if he once did so, the power of transfer should be subsequently unrestricted. On the whole, as regards Behar, I would repeat that men desire power as well as money. The spirit of authority is evidently strong amongst the Behar zamindars. The independence of unfettered sale might embitter class animosity. There is a great deal to be done in that province, and it might be wise not to move too fast. If I had to give a vote on the information in these papers, it would be that if transfer is permitted in cases where it is not supported by custom, at least a general and very definite right of pre-emption should be extended to the Behar zamindar.

Transfer by private sale in Bengal Proper. The political objection.

26. Coming to this conclusion about a part of the country from which the reports are exceptionally full and able, one may very naturally feel doubt about some other places of which the local circumstances do not so clearly appear. The political objection that the displacement of old families may create a discontented class is not without weight, but it applies only to compulsory sales and is counterbalanced by the gain to the ryot if a court sale be substituted for ejectment. Moreover, the execution of decrees might be transferred whenever necessary to the revenue authorities, as allowed by the Code of Civil Procedure, with the design of obviating this sort of political disadvantage. The arguments advanced in the interest of the ryot are briefly that a transferable interest in land, which can be offered as security, will stimulate improvidence, lead to sale, and often result in the surface of cultivator upon his own field. The third clause of section 19 of the Bill has been inserted by the Lieutenant-Governor and we therefore have no criticism upon it. The object is to keep the land in the hands of the ryot class and to prevent non-resident ryots from acquiring the occupancy right except with the zamindar's consent. It may be noted (1) that difficulty would arise unless section 21 (*b*) were made expressly subject to this provision, (2) that the plan could be upset by a *benámi* arrangement, the

Objections in the interest of the ryot.

[1] Edgar, page 122. [2] Rent Papers III, page 701. [3] Rent Papers III, pages 733-734. [4] Rent Papers III, page 726. [5] Rent Papers IV, page 885. [6] Rent Papers III, page 794. [7] Rent Papers III, page 767. [8] Rent Papers III, page 716. [9] Rent Papers III, page 695. [10] *Supra*, page 126. [11] Rent Papers III, page 620.

mahájan putting in a ryot of his own and paying a *salámi* to the zamindar for h
nsent, a proceeding which would lessen the price fetched at the sale, and
that even if this supposition be hypercritical, it seems plain that the reste
tions would greatly diminish the value of the saleable right. I do not thi
the Government of India should express any opinion on the proposal
section 19 (3), until it has been locally discussed. Mr. Dampier,[1] however, ho
that if the occupancy right is to follow residence, voluntary transfers at a
rate should be allowed to such persons only as are qualified by residence to
vested with the right over the lands in question. If it is anywhere necess
to prohibit mortgage,—and the Commission thought it was necessary to do
everywhere,—in order to guard the ryot against the consequences of improv
ence, it must be equally necessary to prohibit private sales in the same loca
ties and for the same reasons, or the law will have no effect. There is a gr
deal of testimony to the prosperity of Eastern Bengal, and it is not an unnatu
inference from the papers that parts of the country are fully prepared for f
sale. But if the peasantry are already impoverished and indebted, or like
to become so in any of the Bengal districts outside Behar, the experience
Jhánsi would certainly suggest much hesitation before conferring upon the
the "fatal gift" of transferability. It will be remembered that in Octol
1870,[2] the Government of India doubted whether it would be politically exp
dient to afford any additional facilities in Bengal for displacing the existi
occupants of land. Mr. Edgar's[3] commentary on the letter then written
instructive. "It seems to me," he observes, "that the question of maki
occupancy rights transferable by private sale differs in many respects from th
of making them liable to sale instead of to ejectment for arrears of rent. T
latter, with proper safeguards against fraud on the part of the landlord, wou
be, I think, an unmixed benefit to the ryot and no injury to the zamind
while I do not see how, in practice, it could have a tendency to transfer the in
to undesirable classes. I have much more hesitation about the former measu
There can be no doubt that the arguments in its favour * * * * * are ve
strong, on the whole, I believe, stronger than the objections; and it may
possible that the results would not be equally good in different parts of Beng
Speaking from my own personal experience, I should say that in East and Nor
Bengal the results would be decidedly good, and that there would be litt
danger of its having the effect feared by the Government of India. Eve
should the objection to making occupancy rights transferable by private sal
be held to preponderate, I hope this should not be allowed to affect the questio
of making them liable to sale for arrears of rent."

Objections in the interest of the zamindar.

27. The objections in the interest of the zamindar are met partly
reserving to him an authority to sanction the acquisition of the right of occu
pancy by non-resident ryots, as above explained, and partly by section 3
under which the landlord can refuse to register the transfer of an occupanc
holding by private sale, and can purchase the plot to be held at his disposal
unoccupied *ryoti* land. On the latter provision I have already made som
remarks.[4] The fifth, ninth, tenth, eleventh, and twelfth objections specified b
Mr. Field come to this, that a zamindar should be able to choose his own ry
and to get the land into his possession when he wants it. The reports ha
very clearly shown that it would be no merely sentimental grievance if th
landlords were obliged to receive all-comers upon the estates. Not only mig
the zamindar be troubled by undesirable *mahájans*, and molested by th
nominees of rival landholders, but it must not be forgotten that even ryot
may sometimes be criminals, or unscrupulous and designing men. I do no
think Mr. Field has given any complete answer to the objection that zamindar
would never be able to get possession of the lands. By the common law o
the country they have no right to take direct possession of *ryoti* land and
turn it into *khámár* land. But under the Bill a right of occupancy may b
acquired in *khámár* land when held directly under a proprietor otherwise tha
for a term, or year by year. The free sale of *khámár* land by the ryot seem
to me a most questionable proceeding. The thirteenth argument, that th
liberty of unrestricted transfer would compel landlords to take steps for pre
venting the acquisition of the occupancy right, has been eliminated by the
stroke of the pen which Mr. Field hinted at and Sir Richard Garth[5] sincerel

[1] Rent Papers III, page 564. [2] Revenue, Agriculture and Commerce Department Progs., February 1879, page 73
[3] *Ibid*, page 150. [4] *Supra*, pages 62-64. [5] Rent Papers III, page 362.

ed would never be attempted. If the occupancy right follows village
idence, the opportunity for interfering with its growth is cut away. The
enth argument, that the ryots would be less careful to pay their rents, is
rth little. The zamindar would have, as I have said, a good security, and, as
Field suggests, improvement in the value of a right does not increase
ligence in its preservation. The sixth and eighth arguments really reach the
nel of the matter, which does not appear to me to have as yet been sufficiently
hed. According to the actual practice of the country how is the benefit of
interest shared or taken at a private sale? I quote from a letter of the
rd of Revenue, dated the 25th October 1877[1]:—"It is said that if occu-
ncy rights are made transferable by law, zamindars will lose the *salami*
ich they now receive for recognising their transfers; but Mr. Ravenshaw
bts whether this will be altogether the case. For whenever the rent is liable
enhancement, the good will of the landlord will be of very great value to the
coming tenant; and in the present constitution of society in rural Bengal,
re can be little doubt that he will have to pay for it." In many points the
ial condition of Bengal under British administration presents curious and inter-
ing resemblances to the descriptions of the French provinces in the latter half
the last century. The *Seigneur* used, it seems, sometimes to take a fine
d et centes) from the incoming purchaser, just as Mr. Ravenshaw imagined
t the zamindars would do in Bengal.[2] Mr. Field's explanations, however, put
matter in a rather different light. In April 1877[3] the Bengal Government
ote—"At present such a tenure" (*i.e.* the right and interest of an occupancy
t) "is in some few cases transferable by local custom. But in the great
jority of cases if an occupancy ryot is evicted, or gives up his holding, the
ure simply reverts to the zamindar who can dispose of it as he pleases." "It
s not suggested" says Mr. Field[4] "that any ryot, who already has a right of
upancy, will pay a *salami* to his landlord for the mere purpose of obtaining
nsferability, and I am aware of no instance in which this has ever been
ne." And again, the "argument is that zamindars derive a considerable in-
me from granting heritable and transferable interests in land, and that of this
ome they will be unjustly deprived, if all ryots' holdings be made by law
nsferable. It would have been more satisfactory if this argument had been
ported by some figures, for these alone can show how much it is worth."
uite so. But there are no figures bearing on the question. The point seems
have dropped out of sight in the reports on the Bill of the Commission.
parently what happens is that a vacant holding falls to the gift of the
indar who takes a money payment on the entry of the new tenant. But this
a mere guess. I have searched the papers without success for any clear
ount of these transactions. Mr. Field appears to say that landlords can grant
new tenants upon a transferable tenure for a consideration occupancy hold-
s which lapse through failure of heirs or from which ryots may be ejected
non-payment of rent. If so, the general extension of the right of transfer
uld certainly tend to diminish the landlord's income from this source. If,
the other hand, the practice of transfer without the zamindar's consent or
terference was thoroughly established, the change which the law would
herwise bring about would have already occurred and would be merely
cognised.

28. Having considered the two most important incidents of the occupancy right, *viz.* the claim to a fair rent including the procedure for enhancement, and transferability, I pass now to the acquisition of the right and to the question whether contract shall be suffered to interfere with it. The Bill (section 20) enacts that no contract, whether entered into before or after the commencement of the statute, shall in any case debar a ryot from acquiring a right of occupancy in *ryoti* lands, unless the land be let for building or some other purpose unconnected with agriculture. There is certainly strong reason to believe that some such provision is requisite if the principle of the Bill is to be carried out. The petition from the Mymensingh cultivators[5] states that the zamindars are busy sending their *amla* and *lattials* about the villages to take *kabuliyats* for limited periods from ryots likely to be entitled to rights of

The Avoidance of Contract.

[1] Resume, Agriculture and Commerce Proceedings, February 1879, page 181. [2] De Tocqueville: France before the Revolution, pages 423-24. [3] Resume, Agriculture and Commerce Proceedings, February 1879, page 136. [4] Digest, pages 172-73. [5] Rent Papers III, page 255.

occupancy. The Collector of Parkipore had heard in July 1880 that a Hindu landlord in that district had issued hundreds of *pattahs* for doubled rents to the satisfaction of the Bill passing into law. Mr. Reynolds remarks that the British Indian Association strongly disapproves this section and continues:—"It is natural that they should do so, for without this section the other new clauses would have little practical effect. An unfettered contract law, it is stated, is the basis of civilised life and the primary condition of moral and social progress. The aphorism is worthy of Joseph Surface, and I regret that the Association should have stooped to employ an argument which they must have known to be altogether sophistical. Free contract between ignorance, poverty, and impervidence on the one side, and cunning, wealth, and power on the other is likely to result in the conclusion of a somewhat inequitable bargain. With regard to this section I sincerely trust that no concession of any kind will be made. As is stated by the Lieutenant-Governor, the great majority of the Government officers concur in his view." If doubt is felt lest injustice should be done in such cases as are mentioned by Messrs. Hewitt and Dampier in the passages cited below, the idea, already suggested, of presuming the contract to be invalid unless it could be proved that equity required its enforcement, might be taken into consideration. Contracts inconsistent with the Land Law (Ireland) Act of 1881 are void, under Section 22 of that enactment, except as to tenancies of an annual value of £150 and upwards.

Two main questions connected with the acquisition of the occupancy right. (1) Will the law select the proper holders?

29. There are numerous points of detail connected with section 19 of the Bill on which it seems undesirable to note at present. The two main questions are, *first*, will the design succeed in fixing upon the right people as occupancy ryots? And, secondly, could the zamindars evade the intention of the legislature? To answer either without a personal knowledge of rural life in Bengal is, I think, impossible. The section bears no resemblance to the proposals of the Commission, and, though section 19 in Mr. Reynold's Bill proceeds on the same principle, it is difficult to apply the views of his critics to the altered project now before the Government. On the first point, it will be observed that under-ryots are excluded, because the section relates only to persons who have been let into possession by a proprietor, tenure-holder, or under-tenure holder.[1] But are men of the *korfa* or *bhágjotdár* class never employed directly by proprietors, tenure-holders, or under-tenure holders, so that they would occupy and cultivate *nyoti* land as tenants, being liable to pay rent for the same? If so, and if the land was in the village where the *bhágjotdár* resided, he would apparently become an occupancy tenant entitled to hold at the legal rent. This, it seems, is the consequence that Mr. Anderson[2] of Bankura anticipates from the proposal to give every resident ryot of an estate the right of occupancy at once in all the land held by him within that estate in which he has a fixed habitation. Again, there are shopkeepers in villages and classes which appear to correspond, in some degree, to the village dependants or *kamin log* of Upper India.[3] Do these men never hold bits of *nyoti* land in their own villages? Is it meant to make them all occupancy ryots? Do *patwáris* and zamindari *amlá* hold land? If so, on what conditions? Are they to be village occupancy ryots if their holdings happen to fit into the terms of the law? I can give no answers to these questions out of the Rent Papers, or I should not ask them. They are suggested by the circumstances of a part of the country where the village communities are compact. Referring to the Bill of the Commission, which did not depart so widely from the existing law as the measure now under discussion, Mr. Metcalfe[4] observes:—"It is very difficult to ascertain the legal status of the great mass of the tenantry. Indeed, without a detailed inquiry, it is impossible to say, with any certainty, how the draft Bill, as its present integrity, will affect them." I think the section, if it is likely to pass into law, should be tested by application to 20 or 30 villages in different parts of the country and the results taken down in writing. There would then be some concrete data to guide the understanding in endeavouring to guess how it would work.

[1] Rent Papers III, page 808. [2] Rent Papers III, page 1005.

[3] Rent Papers III, Mr. Gordon, page 467; Mr. Barlee, page 510; Mr. Gibbon, page 601; The Collector of Furidpur, page 610; Mr. Ravenshaw, page 626; Mr. Sherrin, page 643; Mr. Price, page 663; Mr. A. Smith, page 672; Mr. Nolan, pages 715, 822; Mr. Worsley, page 870; Mr. Veasey, page 883; Mr. Bourne, page 891. On the other side of the question see Baboo Kanji Nundin Sing, pages 215-16, Rent Bengal Landholders, page 561; Baboo Parbati Charn Roy, page 638; Mr. Hewitt, page 682; Mr. Wastmacott, page 910; Mr. Dampier, page 964.

[4] See definition of "ryot" in section 2. [5] Rent Papers III, pages 325-26. [6] Rent Papers III, pages 443, 493, 739.

[7] Rent Papers III, page 708.